Appt - Brief

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SUPREME COURT OF THE UNITED STATES.

No. 201. 5

DAVID M. HUGHES, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE CIRCUIT COURT U. S. FOR THE EASTERN DISTRICT OF LOUISIANA.

G. S. GIDEON, Printer, No. 511 Ninth street, Washington, D. C.

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UNITED STATES OF AMERICA,
Eastern District of Louisiana.

THE UNITED STATES OF AMERICA }
vs.
DAVID MICHAEL HUGHES et al. }

Pleas and proceedings before the honorable the circuit court of the United States, in and for the fifth judicial circuit and eastern district of Louisiana, held at the city of New Orleans, in the district aforesaid, on the 14th day of November, A. D. 1855, being the November term, A. D. 1855, of said court.

Be it remembered, that heretofore, to wit, on the 20th day of January, A. D. 1848, came Thomas J. Durant, esq., attorney of the United States for the eastern district of Louisiana, and filed in the clerk's office of the said court an information and bill in chancery, which is in the words and figures following, viz:

Information and Bill.—Filed 20th Jan'y, 1848.

To the honorable the Judges of the Circuit Court of the United States, for the fifth circuit and district of Louisiana, in chancery sitting:

Informing, showeth unto your honors Thomas J. Durant, attorney of the United States for the district of Louisiana, that on the twenty-second day of February, in the year one thousand eight hundred and twenty-two, a certain John Goodbee, who was at that time an inhabitant of the State of Louisiana, and district aforesaid, did deliver a notice in writing to the then register of the land office of the United States at New Orleans, to the effect that he, the said John Goodbee, claimed to be entitled to a preference in the purchase from the United States at private sale of a certain tract, piece, or parcel of land, designated as lot "one," lying principally on the north side of Bayou Goula, and within the district of lands subject to entry at the said land office of the United States at New Orleans, which claim for a preference in purchase over all other persons was made by the said John Goodbee, under and by virtue of an act of the Congress of the United States, entitled An act for the final adjustment of land titles in the State of Louisiana, and Territory of Missouri, approved on the twelfth day of April, one thousand eight hundred and fourteen, as will be seen by Exhibit A, filed herewith.

And the attorney of the United States aforesaid further informs your honors that the said John Goodbee did, on or about the day and date aforesaid, to wit, the twenty-second day of February, one

thousand eight hundred and twenty-two, furnish satisfactory proof to the register of the said land office of the United States at New Orleans, and to the receiver of public moneys for the district of lands subject to entry at the aforesaid land office, that the said John Goodbee was entitled, under and by virtue of the statutes of the United States in such case made and provided, to the preference which he claimed as above set forth in becoming the purchaser of the aforesaid lot number one, lying principally on the north side of Bayou Goula, in the State of Louisiana, as aforesaid, as will be seen by Exhibit A, filed herewith.

And the attorney of the United States aforesaid further informs your honors, that on the day and date aforesaid, to wit, on the twenty-second day of February, in the year one thousand eight hundred and twenty-two, the said lot number one, lying principally north of Bayou Goula, in the State of Louisiana aforesaid, was supposed to contain one hundred and sixty acres of land, but that the exact contents of its area could not at that time be better ascertained, and that its description by the bearings and distances, as they are usually expressed in the technical language of surveyors, could not at that time be more accurately set forth and distinguished on account of the fact, that at that time the connection of the public surveys, embracing the aforesaid tract of land styled lot number one, lying principally north of Bayou Goula, in the State of Louisiana, had not then been made by the United States surveyors, and returned to the aforesaid local land office in New Orleans.

And the attorney of the United States aforesaid further informs your honors, that on the day and date aforesaid, to wit, on the twenty-second day of February, in the year one thousand eight hundred and twenty-two, the said John Goodbee did pay to the receiver of public moneys at New Orleans the sum of two hundred dollars, being the full sum and price, at the lawful rate of one dollar and twenty-five cents per acre, for the one hundred and sixty acres of land, which the said tract or lot of land was supposed to contain at that time, to the best knowledge of the said John Goodbee, and of the said register and receiver at New Orleans, which will be seen by Exhibit B, herewith filed; and that thereupon, that is to say, upon the payment of the two hundred dollars aforesaid, for the lot of land aforesaid, by John Goodbee aforesaid, the receiver of public moneys aforesaid did then and there issue and deliver to John Goodbee aforesaid a certificate in the usual form, declaring and certifying, as was usual and legal in such cases, that the said John Goodbee had a right to a preference in the purchase at private sale of the aforesaid lot, piece or parcel of land, then only known and described as "lot number one, lying principally north of Bayou Goula."

And the attorney of the United States aforesaid further informs

your honors, that subsequently, when the connections of the public surveys were completed for the district of country comprehending the aforesaid portion of land, and were returned into the land office at New Orleans, the said lot, piece, or parcel of land was found to be accurately described as "lot number one, on the north side of Bayou Goula, in section number fifty-four, in township ten, west of the Mississippi, of range twelve east," and was by the return aforesaid found to contain one hundred and seventy-five acres and forty-six one hundredth parts of an acre, (175 $\frac{46}{100}$ acres.)

And the attorney of the United States aforesaid further informs your honors, that by reason of the various acts and doings of the said John Goodbee, on or about the twenty-second day of February, one thousand eight hundred and twenty-two, that is to say, his notice to the register of the land office aforesaid, at New Orleans, the satisfactory proofs by him, the said John Goodbee, then and there furnished as aforesaid, of a right to a preference in the purchase of the said land as aforesaid, the payment of two hundred dollars by him, the said John Goodbee, as aforesaid, to the receiver of public moneys, and by the certificate of his being entitled to a preference in the purchase of the aforesaid piece, parcel, or lot of land, given, issued, and delivered to him, the said John Goodbee, by the register of the land office at New Orleans as aforesaid, the said John Goodbee did become entitled to enter said lot, piece, or parcel of land; and that he, the said John Goodbee, did enter the said land on the twenty-sixth day of the said month of February, in the year one thousand eight hundred and twenty-two; and that by reasons of the facts as aforesaid he, the said John Goodbee, was then and there entitled to a preference for the purchase, not only of the amount of one hundred and sixty acres, which the lot aforesaid was then supposed to contain, and which could not then be more accurately ascertained, but that he, the said John Goodbee, was then and there entitled to such preference for the entire tract, such as it then existed, and as it was afterwards found to be, when the connection of the public surveys for the district of country embracing the said tract was perfected, as has been already fully set forth, as will be seen by Exhibit C, herewith filed; and that after the said twenty-sixth day of February, in the year one thousand eight hundred and twenty-two, no part or portion of the said piece or parcel or "lot of land number one, on the north side of Bayou Goula, in section number fifty-four, in township ten, west of the Mississippi, of range twelve east," containing one hundred and seventy-five and forty-six one hundredth parts of an acre, was susceptible of being sold by the United States to any other person, nor liable to be entered by any other person in any manner than by the said John Goodbee; and that subsequently, to wit, on the third day of April, in the year one thousand eight hundred and forty-six, the assigns of the said John Goodbee did pay to the receiver of pub-

lic moneys at New Orleans the sum of nineteen dollars and thirty-two cents, being the difference between the price of two hundred dollars and that of two hundred and nineteen dollars and thirty-two cents, the former being the price of one hundred and sixty acres, which the said piece, parcel, or lot of land was supposed to contain at the date of the original entry, to wit, on the twenty-second day of February, in the year one thousand eight hundred and twenty-two, and the latter being the price of one hundred and seventy-five acres and forty-six one hundredth parts of an acre, which the said tract of land was found to contain when the connections of the public surveys were completed; and that the payments so made by the assigns of John Goodbee was intended and taken as a completion of, and as a part and parcel of his original entry, as will be seen by Exhibit D, herewith filed.

And the attorney of the United States aforesaid further informs your honors, that on or about the fourteenth day of May, in the year one thousand eight hundred and thirty-six, one David Michael Hughes, who resides near the town of Alexandria, in the State of Louisiana, did make an application to the register of the United States land office at New Orleans to be allowed to enter and to purchase at private sale the aforsesaid piece, parcel, or lot of land, falsely representing to the said register that the said land was then liable to entry and sale; that the said David Michael Hughes was then and there by the said register of the land office permitted to enter the said land as if the same land was liable to private entry; and that the said David Michael Hughes still falsely representing the said land as liable to private entry and sale, and did, on the day and date aforesaid, to wit, on the fourteenth day of May, in the year one thousand eight hundred and thirty-six, pay to the receiver of public moneys for the district of lands subject to entry at New Orleans the sum of two hundred and nineteen dollars and thirty-two cents; and that there was then and there issued and delivered to the said David Michael Hughes by the register of the land office at New Orleans aforesaid the usual certificate given in such cases.

And the attorney of the United States aforesaid further informs your honors that on the sixteenth day of April, in the year one thousand eight hundred and forty-one, the said David Michael Hughes did present to the Commissioner of the General Land Office at Washington city the certificate aforesaid, so issued to him by the register of the United States land office at New Orleans as aforesaid, and still falsely representing that the land aforesaid was subject to private entry and sale, and that he, the said David Michael Hughes, had legally paid for the same, did procure the said Commissioner of the General Land Office of the United States to issue and deliver to him, the said David Michael Hughes, a patent in the usual form, appearing to confirm unto him, the said

David Michael Hughes, the aforesaid land, as will be seen by Exhibit E, herewith filed.

And the attorney of the United States aforesaid further informs your honors that all the acts and doings of the register of the land office and the receiver of public moneys at New Orleans, in permitting said David Michael Hughes to enter and pay for the said land, were done in error, and were at the time and are now null and void; and that the acts and doings of the Commissioner of the General Land Office at Washington city, in issuing a patent to the said David Michael Hughes, were also then and are now null and void; because the said land has, as is above set forth, long before been sold by the United States to John Goodbee; and that the said David Michael Hughes is bound in equity and good faith to restore and give up said patent, and not to pretend to or to set up under the same any title to the said land.

And the attorney of the United States aforesaid further informs your honors that he is informed and verily believes, and he so alleges it, that the said John Goodbee is dead, and that the said land is now in the joint occupation and possession of Robert Sewall, who resides on the said land, and of Franklin Hudson, a minor, who has not yet attained the age of majority, but who is represented by a tutor duly appointed to him by the laws of Louisiana, viz. Holmes Hutchinson, who is at present within the jurisdiction of this honorable court; and that said parties pretend to possess said land as owners and by a direct chain of titles from the said John Goodbee; that the said land is now worth a much greater sum than five hundred dollars; and that the said parties now in possession of it ought to be made parties to these proceedings, to the end that they may have notice thereof, and that they may afford this honorable court such information and assistance as the purposes of justice may require.

And the attorney of the United States aforesaid further informs your honors, that as soon as the errors were discovered which had been made in issuing a patent for said land to David Michael Hughes, and in the various acts and doings of the officers of the United States at New Orleans preparatory thereto, and before the institution of these present proceedings, the said David Michael Hughes was amicably requested to give up and restore said patent to the Commissioner of the General Land Office, and to receive back from the Treasury of the United States the aforesaid sum of two hundred and nineteen dollars and thirty-two cents, which he had erroneously paid for said land to the receiver of public moneys at New Orleans; and that he, the said David Michael Hughes, was then and there fully informed of all the errors which had been committed in said proceedings; but that the said David Michael Hughes utterly refused to take back the said money, and to restore and give up the patent for the said land obtained by him through

fraud and misrepresentation as aforesaid; and, on the contrary, he, the said David Michael Hughes, insists on holding said patent, and, as the attorney aforesaid is informed and now alleges it to the court, he, the said David Michael Hughes, has commenced suit in one of the State courts of Louisiana against the present possessors of the said land, who holds the same under John Goodbee, aforesaid, to deprive them of said land by means of said patent, to the great damage and injury of the United States, who are bound in equity and good faith to hold harmless all persons who have derived title to said land from the said John Goodbee from the consequences of the errors and mistakes of their own, the United States officers, and particularly from those of the error in issuing a patent for the said land to David Michael Hughes as aforesaid.

But now so it is, may it please your honors, that the said David Michael Hughes, combining and confederating with divers persons at present unknown to the attorney of the United States aforesaid, whose names, when discovered, the attorney aforesaid prays he may be at liberty to insert herein, with apt words to charge them as parties defendant hereto, and contriving how to wrong and injure the United States, absolutely refuses to comply with such requests, and he, the said David Michael Hughes, at times pretends that the aforesaid tract of land was not entered on the twenty-second day of February, in the year one thonsand eight hundred and twenty-two, at the land office in New Orleans, by John Goodbee aforesaid; and that the said John Goodbee did not then and there pay for the said land to the receiver of public moneys at New Orleans; and the said John Goodbee did not then and there become entitled to said tract of land; and that the register of the land office at New Orleans did not issue a certificate then and there to the said John Goodbee, declaring him to be entitled to a preference in the purchase of said land from the United States; and that the said John Goodbee, by virtue of the certificate so issued and delivered to him was not entitled to a preference in the purchase from the United States of the piece, parcel, or lot of land number one, on the north side of Bayou Goula, in section number fifty-four, in township ten, west of the Mississippi, of range twelve east; and that the entry made by him, the said David Michael Hughes, at the land office in New Orleans, on the fourteenth day of May, in the year one thousand eight hundred and thirty-six, was not erroneous, false, or fraudulent; and that the patent issued to him, the said David Michael Hughes, by the Commissioner of the General Land Office, was not so issued and delivered to him illegally and through error and in consequence of misrepresentation and misinformation; and that he, the said David Michael Hughes, was not requested to return and restore said patent to the proper officer of the United States, and to receive back the money from the treasury which he paid for said land in error; and that he, the said David

Michael Hughes, is not bound, either in law or in equity and good morals, to restore said patent, erroneously issued and delivered to him, to the proper officer of the United States; and that the assigns of the said John Goodbee are not the true and lawful owners of said land; and that he, the said David Michael Hughes, is entitled, by his possession of the patent aforesaid, to bring and carry on a suit at law against the assigns of the said John Goodbee, who hold the land from him, the said John Goodbee, and from the United States, in order to dispossess them of said land; and that the said land is not worth a sum exceeding five hundred dollars; and that the United States are not bound in equity and in good faith to protect and defend the assigns of John Goodbee from the consequences of the errors of their own officers, and particularly from the various errors committed in issuing and delivering a patent to him, the said David Michael Hughes, for the said land; and that the United States have no right in equity to call upon him to restore the patent erroneously issued to him for said land.

All of which actings, doings, pretences, and refusals, are contrary to equity and good conscience, and tend to the manifest wrong and injury of the United States in the premises. In consideration whereof and forasmuch as the United States can only have adequate relief in the premises in a court of equity, where matters of this sort and nature are properly cognizable and relievable, to the end, therefore, that the said defendants may, if they can, show why the United States should not have the relief hereby prayed, and may, upon their several and respective corporal oaths, and according to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to such of the several interrogatories hereinafter numbered and set forth, as by the note hereunder written they are repectively required to answer, that is to say:

1st. Whether the said land was not entered by David Michael Hughes, at the land office of the United States in New Orleans, on the fourteenth day of May, one thousand eight hundred and thirty-six?

2d. Whether in making said entry he, the said David Michael Hughes, did not represent said land to the register of the land office as land that was then subject to entry and private sale?

3d. Whether at the time of making said entry he, the said David Michael Hughes, did not know that the said land had previously been sold by the United States to John Goodbee?

4th. Whether he, the said David Michael Hughes, did on the sixteenth day of April, in the year one thousand eight hundred and forty-one, obtain or procure a patent for said land from the General Land Office in Washington?

5th. Whether said David Michael Hughes has, since the said

patent was procured by him, and before the institution of these proceedings, been called upon to restore and give up said patent to the proper officer of the United States, on the ground that said patent was erroneously issued and delivered to him, and to receive back the money which he paid into the treasury, as the *piece* of said land?

6th. Whether the said David Michael Hughes has not refused to give up said patent when so called upon?

7th. Whether the said David Michael Hughes has not commenced and is not now carrying on proceedings at law in one of the State courts of Louisiana, to obtain possession of said land, by virtue of said patent; and if yea, in what court, and who are the parties defendant in said suit?

8th. Whether at the time of his procuring said patent from Washington, he, the said David Michael Hughes, did not have information, or did not have reason to believe that the said land had formerly been entered and paid for by John Goodbee?

9th. Whether the said John Goodbee is now alive; and if not, when did he die?

10th. Whether the said David Michael Hughes did not know, or was not informed when he entered said land, that the land was in possession of Robert Sewall and of Franklin Hudson; or did he not know or believe that it was in possession of some parties claiming it as owners, and of whom?

11th. In whose possession is said land now, and by what title do the present possessors hold it? Is said title derived from John Goodbee, and how?

And the attorney of the United States aforesaid prays that your honors may be pleased to order that a writ of injunction may be issued, under the seal of this honorable court, directed to the said David Michael Hughes, restraining him from proceeding at law in any of the courts of Louisiana or elsewhere, upon said patent erroneously issued and delivered to him as aforesaid, to obtain possession of said land; and further restraining him from selling, disposing of, or parting with said patent during the pendency of these proceedings; and that a writ of subpœna be directed to the said David Michael Hughes, to the said Robert Sewall, and to the said Franklin Hudson, represented by his tutor, Hutchinson Holmes, directing them to be and appear, personally, at a certain day and under a certain pain therein to be limited, to be and appear before this honorable court, and then and there, full, true, direct, and perfect answer make to all and singular the premises; and further, to stand to, perform, and abide such further order, direction, and decree therein, as to your honors shall seem meet; and the attorney of the United States aforesaid prays that after all due proceedings shall have been had, that the said David Michael Hughes may be decreed to deliver up the patent

aforesaid to the United States to be cancelled, as having been issued and delivered to the said David Michael Hughes in error and without right; and the attorney of the United States aforesaid prays for such other further and general relief in the premises as to your honors shall seem meet and the nature of this case may require.

THOMAS J. DURANT,
Attorney of the United States for the District of Louisiana.

The defendant, David Michael Hughes, is required to answer the interrogatories numbered, respectively, 1, 2, 3, 4, 5, 6, 7, 8, 10.

And the defendants, Robert Sewall and Franklin Hudson, the minor represented by his tutor, Holmes Hutchinson, are each required to answer the interrogatories numbered, respectively, 9, 11.

Exhibit A.—Filed 20th January, 1848.

A.—Abstract of land entered at the land office at New Orleans, as settlement-rights, in virtue of the 5th section of the act of 12th April, 1814, entitled "An act for the final adjustment of land titles in the State of Louisiana and Territory of Missouri," from the day of to the day of .

When entered.	Number of recp't and certf.	By whom entered.		Tract purchased.				Quantity.		Price per acre.		Purchase money.		Watercourse.	Gen'l Land Office Tract Book.		Remarks by Surv. General La., May 27th, 1844.
		Name.	Where situated.	Section or part of section.	No. of sec.	No. of town'p.	No. of range.	Acres.	100ths.	Doll.	Cts.	Doll.	Cts.		Vol.	Folio.	
1822. Feb. 26.	8	John Goodbee.	Cy. Iberville.	Lot No. 1, (in red.) Sec. 54, bayou Goula, north side.	54	10	12	160	.....	1	25	200	.....	Par. of Iberville.	2	182	Contains 175 acres, as per map.

GENERAL LAND OFFICE, *August 14th*, 1846.

I, James H. Piper, Acting Commissioner of the General Land Office, do hereby certify that the foregoing is a true and correct extract from the original on file in this office.

In testimony whereof I have hereunto subscribed my name, and caused the seal of this office to be affixed, [SEAL.] at the city of Washington, on the day and year above written.

JAMES H. PIPER,
Acting Commissioner of the General Land Office.

Exhibit B.—Filed 20th Jan'y, 1848.

Register of settlement rights sold in virtue of the 5th section of an act of Congress dated the 12th April, 1814, entitled "An act for the final adjustment of land titles in the State of Louisiana and Territory of Missouri."

Date of receipt.	No. of application and receipt.	Land, by whom purchased.		Tract purchased.	Quantity.		Rate per acre.		Amt. purchase money.	
		Name.	Place of residence and location.	Water-course.	Acres.	100ths.	Dolls.	Cts.	Dolls.	Cts.
1822. Feb'y 26	8	John Goodbee.	Cy. Iberville	Mississippi river.	160	.....	1	25	200	00

GENERAL LAND OFFICE, *Aug. 14th*, 1846.

I, James H. Piper, Acting Commissioner of the General Land Office, do hereby certify that the above is a true and correct extract from the original on file in this office.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of this office to be affixed at the city of Washington, on the day and year above written.

[SEAL.]

JAMES H. PIPER,
Acting Commissioner of the General Land Office.

Exhibit C.—Filed 20th Jan'y, 1848.

LAND OFFICE, NEW ORLEANS, *23d Feb'ry*, 1846.

SIR: Your letter of the 10th inst., requesting a report of all the facts of the case of John Goodbee's entry in February, 1822, under the act of 12th April, 1814, per certificate No. 8, has been received.

From the records of this office, it appears that Mr. Goodbee filed his application to purchase a tract of land under the pre-emption act of 12th April, 1814, designated as lot 1, lying principally on the north side of Bayou Goula; that the proof adduced being satisfactory to the register and receiver, a certificate bearing date 22d February, 1822, was issued by the register; that Mr. Goodbee had a right, and on the 26th day of same month, the entry was completed.

It further appears, that on the tract-book under the President's proclamation of 11th August, 1823, lot No. 1, north side of Bayou Goula, is there registered in the order of sale, but opposite is written in the handwriting of Sam'l H. Harper, the then register, "sold," and on the same line in pencil, in the handwriting of the register's clerk in 1836, "Hudson." Although thus registered under the President's proclamation of a sale of land in 1823, there

can be no doubt that the tract had already been disposed of, as the word sold indicated, and that it is the same lot designated in Mr. Goodbee's application, as may be traced on township plat 10, R. 12 E., as section 54, sold to David Michael Hughes on 14th May, 1836, per certificate No. 644, the number of said section being No. 1 on the original plat, which No. is still retained in red ink, on the plat by which Mr. Hughes was permitted to make his entry; and what may appear singular, Hughes' entry is the only one on record of land that had been offered at public sale, and thus rendered subject to "private entry," from the 6th day of July, 1835, to the 21st Sept., 1838, a period embracing upwards of three years.

I transmit herewith a copy of John Goodbee's application, and of two affidavits enclosed therein.

Mr. Hughes has been notified to return his patent.

I have the honor to be, sir, very respectfully, your obd't servant,

PETER LAIDLAW, *Register.*

To the Hon. JAMES SHIELDS,
Comm'r of the Gen'l Land Office, Washington city.

GENERAL LAND OFFICE, *Aug.* 4, 1846.

I, James H. Piper, Acting Commissioner of the Gen'l Land Office, do hereby certify that the foregoing, on pages 1 and two, are a true copy and literal exemplification of the original, on file in this office.

In testimony whereof I have hereunto subscribed my name, and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.]

JAMES H. PIPER, *Acting Commissioner.*

Exhibit D.—Filed 20th Jan'y, 1848.

GENERAL LAND OFFICE,
August 14th, 1846.

I, James H. Piper, Acting Commissioner of the General Land Office, do hereby certify that the annexed are true and literal exemplifications of the originals on file in this office.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.]

JAMES H. PIPER,
Acting Commissioner of the General Land Office.

Act of 12th April, 1814.
(West of Mississippi river.)

No. 8. LAND OFFICE AT NEW ORLEANS,
3d April, 1846.

It is hereby certified that, in pursuance of law, John Goodbee,

parish Iberville, State of Louisiana, on the 26th day of February, 1822, purchased of register of this office, the lot No. 1, north side of Bayou Goula, or section number fifty-four, in township No. ten, of range No. twelve east, containing one hundred and seventy-five $\frac{46}{100}$ acres, at the rate of one dollar and twenty-five cents per acre, amounting to two hundred and nineteen dollars and thirty-two cents, for which the said John Goodbee has made payment in full, as required by law.

Now, therefore, be it known, that on presentation of this certificate to the Commissioner of the General Land Office, the said John Goodbee shall be entitled to receive a patent for the lot above described.

Entered p. certf. No. 8, 160 acres by plat returned, sec. 54 of T. 10, R. 12, cont'g 175.46. Entered pr. cert. receiver, 15.46; at 1 $\frac{25}{100}$, $19 32. 2,896½.

PETER LAIDLAW,
Register.

No. 2,896½. RECEIVER'S OFFICE AT NEW ORLEANS,
3d April, 1846.

Received from John Goodbee, of the parish of Iberville, the sum of nineteen dollars and thirty-two cents, being in full for the residue of the lot 1, north side Bayou Goula, or section number 54, in township number ten south, of range number 12 east, containing seventeen $\frac{46}{100}$ acres, and forty-six hundredths; at $1 $\frac{25}{100}$ per acre, $19 32.

O. B. HILL, *Receiver.*

Commissioner's instructions, dated March 25th, 1846.

Exhibit E.—Filed 20th Jan'y, 1848.

Certificate No. 644.

The United States of America to all to whom these presents shall come, greeting:

Whereas David Michael Hughes, of New Orleans, has deposited in the General Land Office of the United States a certificate of the register of the land office at New Orleans, whereby it appears that full payment has been made by the said David Michael Hughes, according to the provisions of the act of Congress of the 24th April, 1820, entitled "An act making further provision for the sale of the public lands," for section fifty-four, in township ten, of range twelve east, in the district of lands subject to sale at New Orleans, Louisiana, containing one hundred and seventy-five acres and forty-six hundredths of an acre, according to the official plat of survey of the said lands returned to the General Land Office by the surveyor general, which said tract has been purchased by the said David Michael Hughes:

Now know ye, that the United States of America, in consideration of the premises, and in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant unto the said David Michael Hughes and to his heirs the said tract above described: to have and to hold the same, together with all the rights and privileges, immunities and appurtenances of whatsoever nature thereunto belonging, unto the said David Michael Hughes and to his heirs and assigns forever.

In testimony whereof, I, John Tyler, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, the sixteenth day of April, in the year of our Lord one thousand eight hundred and forty-one, and the independence of the United States the sixty-fifth year.

By the President:

JNO. TYLER.

[SEAL.] By W. P. CAUSIN, JR., *Sec'y.*

JOS. P. WILSON,

Acting Recorder of the General Land Office, ad interim.

Recorded vol. 2, page 137.

GENERAL LAND OFFICE,
August 14th, 1846.

I, James H. Piper, Acting Commissioner of the General Land Office, do hereby certify that the annexed is a true and literal exemplification from vol. 2, page 137, of the patent records in this office.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.]

JAMES H. PIPER,

Acting Commissioner of the General Land Office.

Order on Motion for Injunction.

Minutes.—December Term, A. D. 1847.

UNITED STATES
vs. } 1,666.
D. M. HUGHES et al.

New Orleans, Friday, 21st January, A. D. 1848.

Court met pursuant to adjournment. Present, the Hon. John McKinley, presiding judge; the Hon. Theodore H. McCaleb, district judge.

The application herein made by the complainants, by their counsel, for an injunction, was this day taken up and argued, whereupon it is ordered that said application be refused.

Joint and several Answer of Robert Sewall and Franklin Hudson.—Filed 6th March, 1848.

THE UNITED STATES
vs.
DAVID M. HUGHES et al.

The Circuit Court of the United States, for the fifth circuit and district of Louisiana, in chancery sitting.

The joint and several answers of Robert Sewall and Franklin Hudson, an infant under the age of twenty-one, by Holmes Hutchinson, his tutor, two of the defendants to the bill of complaint of the United States, complainants.

These defendants, for answering unto so much of said complainant's bill of complaint as they are advised is material for them to make answer unto, answer and say, that according to their information and belief, John Goodbee is now alive, and that he resides near Covington in this State.

And these defendants further answering say, that the land to which reference is made in the complainant's bill, and therein described as lot number "one," on the north side of Bayou Goula, in section fifty-four, in township ten, west of the Mississippi, of range twelve east, is in possession of these defendants, Robert Sewall and Franklin Hudson, by his tutor Holmes Hutchinson; that this land aforesaid has been in their possession, and those under whom they claim, for about thirty-nine years; that during said period it has been successively cultivated for corn and cotton, and now forms a part of a sugar plantation; that said land was peaceably possessed by these defendants, and those under whom they claim, until the month of August, in the year one thousand eight hundred and forty-two, when a suit at law was instituted by David M. Hughes, one of the defendants to complainant's bill, to evict these defendants, Robert Sewall and Franklin Hudson, who answers by his tutor, Holmes Hutchinson, upon a pretended title from a recent purchase made of the land office of the United States at New Orleans, which purchase or entry was made on or about the fourteenth day of May, one thousand eight hundred and thirty-six, and upon a patent for said land issued by the Commissioner of the General Land Office of the United States, on the sixteenth day of April, one thousand eight hundred and forty-one.

And these defendants further answering say, that they jointly possess said land, and hold the same by a claim of title beginning in the year one thousand eight hundred and nine; that Daniel Beedle, as these defendants are informed and believe, inhabited and cultivated the aforesaid land in the year one thousand eight hundred and nine, and having inhabited and cultivated said land for several years, the aforesaid Daniel Beedle was succeeded by John Goodbee, who on or before the twenty-second day of Febru-

ary, one thousand eight hundred and twenty-two, made application at the land office of the United States at New Orleans, under an act of Congress passed on the twelfth (12th) day of April, one thousand eight hundred and fourteen, entitled "An act for the final adjustment of land titles in the State of Louisiana and Territory of Missouri," for the pre-emption right to said land, as will more fully appear by exhibit marked No. 1 hereunto annexed, to which reference is prayed, and which is asked may be taken as part of this answer.

And these defendants further answering say, that the said John Goodbee on the twenty-fifth day of January, one thousand eight hundred and nineteen, and on the seventeenth day of April of the same year, obtained satisfactory proof by Charles Cox and Philip Stope of his pre-emption right to said land, as will more fully appear by exhibit marked No. 2 hereunto annexed, to which reference is asked, and which is prayed may be taken as a part of this answer.

And these defendants further answering say, that the said John Goodbee, on the twenty-second day of February, one thousand eight hundred and twenty-two, did furnish the aforesaid proofs to the register of the land office at New Orleans; and thereupon that the said register certified that the applicant had a pre-emption right to the land claimed, and that he, the said applicant, John Goodbee, was entitled to one hundred and sixty acres of land, as applied for, subject, however, to the sectional or divisional lines to be thereafter run under the authority of the United States, as will more fully appear by exhibit marked No. 3 hereunto annexed, to which reference is asked, and which is prayed may be taken as a part of this answer.

And these defendants further answering say, that on the twenty-sixth day of February, one thousand eight hundred and twenty-two, the said John Goodbee paid to the receiver of public moneys the sum of two hundred dollars for one hundred and sixty acres of said land, known as lot number "one," lying principally north of Bayou Goula, in the State of Louisiana, as will more fully appear by exhibit marked No. 4 hereunto annexed, to which reference is asked, and which is prayed may be taken *be* a part of this answer.

And these defendants further answering say, that, as they are informed and believe, the said lot number "one," at the time the said John Goodbee paid the said sum of two hundred dollars to the said receiver of public moneys, was thought to contain but one hundred and sixty acres of land.

And these defendants further answering say, that on the twenty-seventh day of January, one thousand eight hundred and twenty-two, the said John Goodbee conveyed the aforesaid land, known as lot number "one," to Reuben Bush, as will more fully appear

by exhibit marked No. 5 hereunto annexed, to which reference is asked, and which is prayed may be taken as part of this answer.

And these defendants further answering say, that on the nineteenth day of June, one thousand eight hundred and twenty-four, the said Reuben Bush conveyed the aforesaid land, known as lot number "one," to Robert Loyd, as will appear more fully by exhibit marked No. 6 hereunto annexed, to which reference is prayed, and which is asked may be taken as part of this answer.

And these defendants further answering say, that on the twenty-fifth day of April, one thousand eight hundred and twenty-five, the said Robert Loyd and Silas F. Hudson were cultivating the said land, known as number "one," or section number fifty-four, and one other lot of land known as lot number two, or section number fifty-five, in co-partnership; that in consideration of said co-partnership and of the conveyance by Silas F. Hudson of certain things to the co-partnership aforesaid, the said Robert Loyd did sell, convey, and set over to the said co-partnership the said tract of land, known as lot number "one," together with one other tract of land, known as number "two;" that the said Robert Loyd and Silas F. Hudson did, by the same act which was passed on the twelfth day of September, one thousand eight hundred and twenty-five, and by which the said lots, number "one" and number "two," were conveyed to the co-partnership between the said Robert Loyd and Silas F. Hudson, enter into a co-partnership, by which it was agreed that there should be and was a co-partnership between them for the carrying on and cultivating the plantation or land aforesaid, and described as lots number "one" and number "two," to continue for the period of five years from the first day of January last passed before the signing of the act of conveyance, and that the expenses of said plantation, and the profits and losses that might be made or result therefrom, should be borne and shared equally between the said parties, Robert Loyd and Silas F. Hudson, as will more fully appear by exhibit marked No. 7 hereunto annexed, to which reference is asked, and which is prayed may be taken as part of this answer.

And these defendants further answering say, that on the second day of July, one thousand eight hundred and twenty-seven, Robert Loyd, together with other things, conveyed unto Silas F. Hudson an equal and undivided half of the aforesaid lots of land known as lots number "one" and number "two," as will more fully appear by exhibit marked No. 8 hereunto annexed, to which reference is asked, and which is prayed may be taken as a part of this answer.

And these defendants further answering say, that on the seventeenth day of March, one thousand eight and thirty-six,

the said Silas F. Hudson conveyed with other things the undivided half of said lots number "one" and number "two," to William M. Sambeth, as will more fully appear by exhibit marked number 9 hereto annexed, to which reference is asked, and which is prayed may be taken as part of this answer.

And these defendants further answering say, that on the twenty-fifth day of January, one thousand eight hundred and forty-one, the said William M. Lambeth and his wife Georgiana Slocum conveyed the undivided half or moiety of the aforesaid lots of land known as lots number "one" and number "two," to Robert Sewall, one of these defendants, as will more fully appear by Exhibit marked No. 10 hereunto annexed, to which reference is asked, and which is prayed may be taken as part of this answer.

And these defendants further answering say, that they are informed and believe that Silas F. Hudson died on or about the tenth day of October, one thousand eight hundred and thirty-nine; that Franklin Hudson *as* the only surviving heir of said Silas F. Hudson, and as such succeeded to the rights of the said Silas F. Hudson, in the said land known as lots number "one" and number "two."

And these defendants further answering say, that when the connections of the public surveys were completed, the said lot of land known as lot number "one" was ascertained, as these defendants are informed and believe, to contain one hundred and seventy-five acres and forty-six hundredths acres of land; that the acres of land numbering fifteen acres and forty-six hundredths of an acre, the difference between one hundred and sixty acres and one hundred and seventy-five forty-six hundredths acres, were paid for by the assigns of John Goodbee, and that said payment was intended as a completion of, and as a part and parcel of his original entry, as will more fully appear by reference to complainant's bill and Exhibit marked D, and therein referred to, by which it will be seen that said payment for the fifteen and forty-six hundredths acres mentioned above was made on the third day of April, one thousand eight hundred and forty-six.

All of which matters and things these defendants are ready to aver, maintain and prove as this honorable court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf sustained, and to be forever quieted in their title and possession. And your respondent will ever pray.

(Signed) ISAAC T. PRESTON,
Solicitor for Def't.

Circuit Court of the United States, fifth circuit and district of Louisiana.

Personally came and appeared before me the undersigned, commissioner of the United States, in and for the district of Louisiana, at New Orleans, in said district, this 2d day of March, A. D. 1848,

Robert Sewall and Holmes Hutchinson (who answers for Franklin Hudson,) the defendants in the within and foregoing answer, who being by me first duly sworn, do depose and say, that the matters and facts by them charged and averred in this their joint answer, as charged and averred upon their own knowledge, information and belief, are true, and those charged as derived from the information and knowledge of others they believe to be true.

(Signed) ROBERT SEWALL,
" HOLMES HUTCHINSON.

Sworn to and subscribed before me, at New Orleans, this the 2d March, 1848.

I. Q. A. HOIT,
U. S. Comm'r, Dist. of Louisiana.

Exhibits Nos. 1, 2, *and* 3.—Filed with plea and answer of Sewall and Hudson, 6 March, 1848.

LAND OFFICE,
Southeastern District of Louisiana.

Exhibit No. 1.

To the Register and Receiver of the eastern district of Louisiana:

GENTLEMEN: I apply to become the purchaser of a tract of land by virtue of settlement, under the act of Congress of the 12th of April, 1814, situated as follows: in the parish of Iberville, principally on the north side of the Bayou Goula, designated as No. 1 by the surveyor, and is the same land which was inhabited and cultivated by David Beedle or Bidelle in the year 1813, under which settlement I claim by purchase.

This land belongs to the United States, and is not rightfully claimed by any other person, neither has said Bidelle removed from the State. The land claimed has not been surveyed according to law, but I apply for the right of pre-emption to one hundred and sixty superficial acres, at the price provided by law, and offer proof of the facts set forth.

(Signed) JOHN GOODBE.

No. 8. Exhibit No. 3.

The applicant having proved to the satisfaction of the register and receiver for the eastern district of Louisiana, that he has a pre-emption right to the land claimed, I, in consequence, certify that he is entitled to one hundred and sixty superficial acres of land as applied for, subject, however, to the sectional or divisional lines to be hereafter run, under the authority of the United States, Feb'y 22d, 1822.

(Signed) SAM. H. HARPER, *Register.*

REGISTER'S OFFICE, *New Orleans.*

I, Louis St. Martin, register of the land office at New Orleans, do hereby certify the foregoing to be a true copy of the original on file in this office. In faith whereof I have hereunto subscribed my name this 26th day of January, 1848.

L. MARTIN, *Register.*

LAND OFFICE,
Southeastern District of Louisiana.

Exhibit No. 2.

Before me, John Dulton, judge in and for the parish of Iberville, personally appeared Charles Cox, who being duly sworn on the Holy Evangelist, declares and says, that Daniel Bedlee occupied and cultivated a tract of land lying on the Bayou Goula, in the parish of Iberville, in the year eighteen hundred and thirteen; that the said tract claimed lies partly on one side of the said bayou (principally on the north side) and partly on the other side, or south side of said bayou, and about at the distance of three miles from the Mississippi.

(Signed) CHARLES his ✕ mark. COX.

Sworn and subscribed before me, this 25th day of January, A. D. 1819, at my office in the parish of Iberville.

(Signed) JOHN DULTON,
Judge of the Parish of Iberville.

Likewise came before me, judge aforesaid, Philip Stope, who being duly sworn as the above named deponent, saith that the said Daniel Biddle, or Bedle, occupied and cultivated the tract described in the preceding declaration, in the year one thousand eight hundred and thirteen.

(Signed) PHILIP his ✕ mark. STOPE.

Sworn and subscribed before me, this 17th day of April, A. D. 1819.

(Signed) JOHN DULTON,
Judge of the Parish of Iberville.

REGISTER'S OFFICE, *New Orleans.*

I, Louis St. Martin, register of the land office at New Orleans, do hereby certify the foregoing affidavit to be a true copy of the original, on file in this office.

In faith whereof, I have hereunto subscribed my name this 26th day of January, 1848.

(Signed) L. ST. MARTIN, *Register.*

Exhibit No. 4.—Filed with foregoing, 6th March, 1848.

No. 5. RECEIVER'S OFFICE, NEW ORLEANS,
Feb'ry 26th, 1822.

Received of John Goodbee two hundred dollars, being the purchase money for one hundred and sixty superficial acres of land in the parish of Iberville, designated as No. 1 by the surveyor, to which he has a pre-emption right according to the certificate of the register No. 8, exhibited to me.

160 acres, *a* $1\frac{25}{100}$, $200.

(Signed) J. J. McLANAHAN, *Rec'r.*

Original filed 9th Oct., 1845.

(Signed) PAUL DEBLIEUX, *Clerk.*

I, Adonis Petit, clerk of the sixth district court of the State of Louisiana, in and for the parish of Iberville, do hereby certify the foregoing to be a true and correct copy of the original receipt remaining on file in the case of David M. Hughes vs. Robert Sewall, No. 1,977 of the docket of the late 4th district court of the parish of Iberville, in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of our sixth district court at Plaquemines, parish of Iberville, this 4th day of February, A. D. 1848. [SEAL.]

ADONIS PETIT, *Clerk.*

GENERAL LAND OFFICE, *September* 23*d*, 1846.

SIR: On the 26th of February, 1822, John Goodbee entered at the land office at New Orleans, Louisiana, under the pre-emption act of the 12th of April, 1814, (Laws relating to Public Lands, vol. 1, pp. 631 & 651,) per receiver's receipt No. 8, a tract of land situated on the Mississippi river, supposed to contain 160 acres, and paid therefor at the rate of $\$1\frac{25}{100}$ per acre, which tract could not then be better described, because the connections of the public surveys embracing the land had not then been made and returned to the land office.

The entry was made in accordance with the practice in such cases and was regular and legal in all respects. Subsequently proper returns of surveys were made, on which the land was fully described and designated as lot No. 1, on the north side of Bayou Goula, or section 54, in township 10 (west of the Mississippi) of range 12 east, and therefrom it appears that the land officers permitted on the 14th May, 1836, one David Michard Hughes to enter the same land as if it were a tract of public land, when it had been entered more than 14 years previously by Goodbee. The fact that Hughes' entry was for Goodbee's land was not brought to the attention of this office, and the error of the land officers in permitting the entry was carried into patent, which was issued to Hughes 16th

of April, 1841. On ascertaining the illegality of the transaction with Hughes, he was called on to surrender the patent, which had issued in his favor for Goodbee's land; and as he has failed to do so, the object of this communication is to request that you will give such authority as will enable the claimants under Goodbee tc use the name of the United States with a view to proper proceedings in the United States district court for the district of Louisiana, in order to set aside and annul the patent thus illegally issued to Hughes. Certified copies of the following described papers are herewith enclosed, viz:

1st. Abstract of land entered at the land office at New Orleans, as settlement rights, in virtue of the 5th section of the act of 12th April, 1814.

2d. The certificate of purchase granted to John Goodbee, 3d April, 1846, by the register at New Orleans.

3d. (On same paper.) The receipt granted to him by the receiver of public moneys, for the additional payment required to complete the purchase of the 26th of February, 1822.

4th. Register of settlement rights sold in virtue of the 5th section of an act of Congress, app'd 12th April, 4814.

5th. The register's letter of the 23d February, 1846, to this office.

6th. The patent issued to David Michard Hughes, at New Orleans, La., certificate No. 644.

I am, sir, very respectfully, your ob't servant,

JAMES H. PIPER,
Acting Commissioner.

P. S. Mr. Holmes Hutchinson, of Utica, New York, who represents the case before this office, has this day been advised of this reference of the case to you.

J. H. P.

Exhibit No. 5.—Filed with foregoing, 6th March, 1848.

Sale of land from John Goodbee to Reuben Bush, 27th June, 1822.

Book G, No. 657.

Before John Dulton, parish judge in and for the parish of Iberville, personally appeared John Goodbee, of the said parish, who did sell and convey unto Reuben Bush, of said parish, present and accepting purchaser for himself, his heirs, and assigns, all the right, title, interest, claim and demand, which the said John Goodbee has in or to a certain tract of land, situate on the Bayou Goula, by virtue of a writ of pre-emption; and likewise the said John Goodbee sells to the said Reuben Bush the certificate of money paid to the receiver of public moneys for said land, of which receipt the following is a true copy:

"RECEIVER'S OFFICE, NEW ORLEANS,
Feb'y 26th, 1822.

"No. 5. Received of John Goodbee two hundred dollars, being the purchase money for one hundred and sixty superficial acres of land in the parish of Iberville, (designated No. 1 by the surveyor,) to which he has a pre-emption right according to the certificate of the register No. 8, exhibited to me. 160 acres *a* 1 25, $200. Original.

J. J. McLANAHAN."

And the said certificate of said land, together with the patent which shall issue thereon, shall of right belong to the present purchaser, although they be issued in the name of the vendor.

This sale is made for and in consideration of the sum of two thousand dollars, which the purchaser obliges himself to pay to the vendor or to his legal representatives, in four equal instalments, as follows: The first on March next, of five hundred dollars; the second of a similar sum in March, eighteen hundred and twenty-four; the third of a similar sum in March, eighteen hundred and twenty-five; and the fourth of a similar sum in March, eighteen hundred and twenty-six; for which payments the said Reuben Bush has furnished and delivered to the vendors four promissory notes, countersigned ne varietur by me, judge aforesaid; the said land to remain specially mortgaged, until final payment of said notes.

Thus done and passed in my office, this twenty-seventh day of June, in the year of our Lord one thousand eight hundred and twenty-two, in presence of J. A. Haase and Surveille Hebert, witnesses, who have signed with the parties, and me, judge aforesaid.

(Signed) JOHN GOODBEE,
REUBEN BUSH.

J. A. HAASE,
SURVEILLE HEBERT.

JOHN DULTON,
Parish Judge of Iberville Parish.

STATE OF LOUISIANA, *Parish of Iberville.*

I, John Dulton, parish judge in and for the parish of Iberville, do hereby certify the foregoing to be a true copy of the original act remaining on file and of record in my office, book "G," entry No. 657.

In testimony whereof I have hereunto set my hand and public seal, this 5th day of May, A. D. 1846.
[SEAL.]

JOHN DULTON,
P. Judge.

Exhibit No. 6.—Filed with the foregoing, 6th March, 1848.

Sale of land from Reuben Bush vs. Robert Loyd.

Book K, No. 201.

Between Reuben Bush on the one part and Robert Loyd on the other part, the following contract was made:

Article the first. Reuben Bush sells to Robert Loyd a tract of land situated in the parish of Iberville, on the north side of the Bayou Goula, containing one hundred and sixty acres, being lot No. 1, of the public land surveyed on the north side of said bayou, bounded on the side towards the Mississippi by land of Paul Hebert, and on the opposite side by land of the said Robert Loyd. This land was purchased by Reuben Bush from John Goodbee, by act in the parish judge's office in Iberville, and by John Goodbee from the United States, by right of pre-emption.

Robert Loyd binds himself to pay for said land the price of seventeen hundred dollars in the following manner: first payment, five hundred dollars to be made to Joseph Landry or his order, on account of a note given for that sum by the vendor to John Goodbee, for part of his purchase money, when the present vendor bought from Goodbee; three hundred and fifty dollars to be paid to Joseph Hebert. The two foregoing payments to be made in March, eighteen hundred and twenty-five. 2d payment payable in March, eighteen hundred and twenty-six, to James Goodbee, or to the holder of the said Bush's note for five hundred dollars, passed to John Goodbee in part payment of the above tract of land; and for the balance of whole purchase, the said Loyd has this day passed his note to the said Bush for three hundred and fifty dollars, payable in March, eighteen hundred and twenty-six. The said Bush binds himself to surrender the possession of the said property to the orders of said Loyd on or before the 25th of January next ensuing.

In testimony whereof, we, the said parties, have made two originals of this, on the other party holds the other, and signing the same this 19th of June, in the year eighteen hundred and twenty-four.

(Signed) REUBEN BUSH,
ROBERT LOYD.

Witnesses present: G. PEARCE,
THOMAS JONES.

I certify the foregoing to be a correct transcript of the original instrument of writing, inscribed this twenty-first of June, eighteen hundred and twenty-four.

(Signed) JOHN DULTON,
P. Judge.

STATE OF LOUISIANA,
Parish of Iberville.

I, John Dulton, parish judge, in and for the parish of Iberville, do hereby certify the foregoing to be a true copy from the records of my office-record, book designated K, No. 201.

[SEAL.] In testimony whereof, I have hereunto set my hand and public seal, this 5th day of May, A. D. 1846.

JOHN DULTON,
P. Judge.

Exhibit No. 7.—Filed with foregoing, 6th March, 1848.

Act of Partnership and Sale, 12th Sept., 1825.

Book K, No. 504.

Before me, John Dulton, judge of the parish of Iberville, personally came and appeared Robert Loyd, of the one part, and Silas F. Hudson, of the other part, who do declare, that whereas by verbal agreement a copartnership was entered into by and between the said parties, on the first day of January last, for the purpose of cultivating and *carry* on a plantation on the said parish:

Now, therefore, to carry the same into effect, the said parties do hereby enter into the following covenants and agreements, to wit: the said Robert Loyd doth hereby sell, convey and set over to the said copartnership a tract of land now owned by him and in possession of the said copartners, situated in this parish, on the Bayou Goula, being well known and designated in the surveys made under the government of the United States, numbers one and two, on the north side of the said bayou, bounded above by lands of Paul Hebert and others, and below by lands of Devance Hamilton, valued by the parties at the price of three thousand dollars. The said Silas F. Hudson doth hereby sell, convey and set over to the said copartnership seven slaves, to wit: Henry, a boy, aged about 15 years; Fresley, a boy, aged 12 years; Debby, a girl, aged about 20 years, and her child Nancy, aged about 1 year; Nancy, a girl, aged about 17 years; Hess, a girl, aged about 17 years; Maria, a girl, aged about 14 years, now in the possession of the said copartners, and valued by the parties at the price of three thousand dollars. It is, however, understood that at the dissolution of this copartnership the said Silas F. Hudson shall have the privilege of taking back the said child of Debby, named Nancy, above mentioned, or at her estimated value at such sum, accounting therefor to the copartnership. The said parties do hereby covenant and agree that there is and shall be a copartnership between them for the carrying on and cultivating the plantation or land aforesaid, to continue for and during the period of two years from the first day of January last, the expenses of which and the profits

and losses that may be made, or result therefrom, to be borne and shared equally between the said parties. The said Robert Lloyd doth hereby sell, convey and set over to the said copartnership two slaves, to wit, Caster, aged about 24 years, and Jem, aged about 23 years, for the price of twelve hundred dollars, which slaves are now in the possession of the said copartners, and the said Silas F. Hudson agrees to pay to the said Robert Lloyd his share of the price of the said slaves, to wit, the sum of six hundred dollars, on the 20th day of April next, with interest thereon, at the rate of ten per cent. per annum from the twentieth day of April last, until final payment.

The said Silas F. Hudson shall have the sole management of the said plantation and negroes during the continuance of this copartnership, and shall, at the end of each and every year, render to his said copartner a just and true account of the receipts and expenditures by him made for the said concern, and pay over to him the net amount of the proceeds or profits arising therefrom. It is furthermore agreed by the said parties, that the said Silas F. Hudson shall be allowed by the copartnership the sum of three hundred dollars, as a compensation for his management and superintendence of the said plantation, to be paid from the proceeds of the common crop.

Done at the parish of Iberville, this twelfth day of September, in the year one thousand eight hundred and twenty-five, in presence of J. A. Haase, Nicholas Shartale, witnesses, who have signed with the parties appearants and me, judge aforesaid.

(Signed) ROBERT LLOYD,
(") S. F. HUDSON.
J. A. HAASE,
NS. SHARLATE.

JOHN DULTON,
Parish Judge of Iberville Parish.

I, John Dulton, parish judge, in and for the parish of Iberville, State of Louisiana, do hereby certify the foregoing to be a true copy of the original act remaining on file and of record in my office, in record-book K, entry No. 504.

[SEAL.] In testimony whereof, I have hereunto set my hand and public seal, this 5th day of May, A. D. 1846.

JOHN DULTON,
P. Judge.

(*Endorsed:*)

Exhibit No. 7. 1,666. Filed 6 March, 1848.

HAIT, *D. C.*

CLERK'S OFFICE,
Circuit Court of the United States, 5th circuit, eastern district of Louisiana.

I hereby certify the foregoing to be a true copy from the original on file in this office.

Witness my hand and the seal of said court, at the city of New Orleans, this 30th March, A. D. 1853.

J. W. GURLEY, *Clerk.*
By W. CORNELIUS, *Dep. C'k.*

Exhibit No. 8.—Filed with foregoing 6th March, 1848.

Sale of Land and Slaves from Robert Loyd vs. Silas F. Hudson. Book L, No. 201.

Before me, John Dulton, parish judge in and for the parish of Iberville, personally came and appeared Robert Loyd, of the said parish, who did sell and convey, and by these presents doth sell and convey unto Silas F. Hudson, also of the said parish, present and accepting purchaser for himself, his heirs and assigns, an equal and undivided half of a certain tract or parcel of land lying and situate on the north side of the Bayou Goula, in said parish, being lots numbered one and two of the lands laid out and sold by the United States on said bayou, containing about three hundred and four acres, bounded on one side by Paul Hebert and others, and on the other side by Duano Hamilton. And also an equal and undivided half of nine slaves, viz: Henry, aged about eighteen years; Frisby, aged about fifteen years; Debby, aged about twenty-two years, and Nancy, her child, aged near two years; Nancy, aged about twenty years; Maria, aged about seventeen years; Heme or Hester, aged about twenty years; Carter, aged about twenty-seven years; and Jem, aged about twenty-six years; together with all the cattle, horses, farming utensils, and other movable property belonging or attached to said plantation. The foregoing sale is made for and in consideration of the price and sum of seven thousand two hundred dollars, which the purchaser binds and obligates himself to pay to the vendor, or to the vendor's assigns or other legal representatives, in six equal instalments of twelve hundred dollars each, the first whereof becomes due in the month of March, in the year eighteen hundred and twenty-eight, the second in one year from the last mentioned date, and one *another* like instalment in the month of March in each year until the whole be paid, the last instalment becoming due in the month of March, in the year eighteen hundred and thirty three, the purchaser to have the privilege of putting off each payment, "except the two first," for one year it shall become due, and for such delay the purchasers to pay interest at the rate of nine per cent. per annum. The said land is in part mortgaged to John Goodbee for the sum of one thousand

dollars, which the said Robert Loyd obliges himself to pay and cause to be cancelled out of his own private funds, so that the purchaser shall not be held to contribute to any part of the payment thereof. The said slaves are mortgaged by act in my office, duly recorded for the sum of fifteen hundred dollars, which is to be paid by the parties to this act on equal shares for each. The expense of planta'n and material necessary for a gin now erecting on said land is to be shared equally by both parties, as well as carpenters and ginwrights' bill of the same. The partnership which heretofore existed between the parties to this act is hereby dissolved. All debts of said partnership, not above enumerated or specified, are to be paid in equal shares by each of the parties, among which are recognised a note due to the Bank of Louisiana for seven hundred and eighty dollars, subscribed by the said Loyd alone. The said Loyd is to have till the first of January, in the year eighteen hundred and twenty-nine, for the payment of the mortgage due to John Goodbee. The whole of said property is to remain specially mortgaged for surety of the payment of the price of this sale.

Thus done and passed in my office the second day of July, in the year of our Lord one thousand eight hundred and twenty-seven, in presence of Nicholas Shurlatti and J. A. Haase, witnesses, who have hereunto set their hands with the parties and me, the said judge.

(Original signed) ROBERT LLOYD,
SILLAS F. HUDSON.

J. A. HAASE,
NS. SURLATTI.

JOHN DULTON,
Parish Judge.

I, Louis Petit, recorder in and for the parish of Iberville, do hereby certify the foregoing to be a true copy of the original act remaining in my office, and recorded in record-book L, entry No. 201.

Witness my hand and seal of office, this 24th January, 1848.
[SEAL.]

L. PETIT, *Recorder.*

Endorsed: Exhibit No. 8. 1,666. Filed 6th March, 1848.
HAIT, *D. C.*

CLERK'S OFFICE,
Circuit Court of the United States, fifth circuit and eastern district of Louisiana.

I certify the foregoing to be a true copy from the original on file in this office.

[SEAL.] Witness my hand and the said seal of the said court at New Orleans, this 30th of March, A. D. 1853.
(Signed) J. W. GURLEY, *Clerk.*
By W. CORNELIUS, *Dep. Cl'k.*

Exhibit No. 9.—Filed with foregoing 6th March, 1848.

Sale of Plantation by Silas Hudson to Wm. M. Lambeth.

Before me, Adolphe Mazureau, notary public in and for the parish and city of New Orleans, duly qualified and sworn, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared Silas F. Hudson, of the parish of Iberville, in the State of Louisiana, who declared, that for the consideration hereinafter set forth, he has sold, bargained, conveyed, assigned, transferred, and set over, as he does by these presents sell, bargain, convey, assign, transfer, and set over, with full guarantee against all debts, mortgages, (evictions,) *allineation*, and all incumbrances, as of what nature and kind soever, unto William Merodoth Lambeth, of this city, here present and accepting, purchaser for himself, his heirs and assigns:

1st. The undivided half of a certain plantation hereinafter designated, said plantation composed of two lots of land situated in the said parish of Iberville, on the north side of Bayou Goula, being of the lands laid out and sold by the United States, and designated as lots numbered one and two, in the north of said bayou, containing about three hundred and four superficial acres, and all the buildings and improvements thereon.

2d. The undivided half of the following slaves, viz: Henry, aged twenty-four years; Frisby, twenty; John, fourteen; Jackson, eight; Dolly, three; Maria, eighteen; Fanny, thirty-four; Ann, twelve; Fanny, five; Patrick Smith, twenty-six; Peter Lee, twenty-seven; Ruebin Freeman, twenty-three; Lewis Jackson, twenty-two; John Hutchinson, thirty-four; George Daniels, sixteen; May Thomas, twenty-four; Nelly Lee, twenty-six; Emily, eighteen; Elly Thomas, twenty; Nacy, three months; Sandy, twenty-six; Erney, twenty-four; Sally Ann, nineteen, and her child, three months.

3d. The undivided half of all the cattle, horses, oxen, mules, cart, stock and farming utensils.

4th. Together, also, with the undivided half of one hundred and five shares of the capital stock of the Union Bank of Louisiana.

The undivided half of all which plantation, slaves, and stock belongs to the present seller, for having acquired the same from Edward Kimball by an act executed before the undersigned, notary, on the fifteenth March, instant, with the exception of the four last mentioned slaves, which are the private property of the said Silas F. Hudson.

To have and to hold the said land and slaves, and stock, unto

the said purchaser, his heirs and assigns forever. And the said Sil*l*as hereby further promises, that he and his heirs shall and will forever warrant and defend the property herein conveyed against all legal claims and demands whatever; and the said Sil*l*as moreover transfers unto the said purchaser all the rights and actions of warranty to which he is entitled, against all the former proprietors of the land and slaves herein conveyed, subrogating said purchaser to the said rights and actions to be by him enjoyed and exercised in the same manner as they might have been by the present seller.

This sale is made for and in consideration of the sum of fourteen thousand eight hundred and sixty-eight dollars and seventy-five cents, in deduction whereof the said purchaser has paid in cash, before the execution of these presents, the sum of five thousand dollars, out of the presence of the notary and witnesses undersigned, to the said seller, who hereby acknowledges the receipt thereof, and grants full discharge and acquittances for the same.

And for the balance, the said purchaser, William M. Lambeth, assuming in every respect all the obligations contracted and assumed by his present seller, Sil*l*as F. Hudson, towards Edmond Kimball, by the aforesaid act passed before the undersigned notary, of the fifteenth day of March, instant—that is to say, the said William M. Lambeth agrees and obligates himself to pay—

1st. The sum of three thousand dollars, which is the balance due to Isaac Clark, who sold the undivided half of said lands, slaves and stock to Edmond Kemball, the payment of which sum had been assumed by the said Silas F. Hudson and the said William M. Lambeth, hereby puts himself exactly in the same place and situation as the said Silas F. Hudson was, in relation to the payment of the said sum of three thousand dollars.

2d. The said purchaser further promises to pay and take up at maturity three certain drafts issued by the said Hudson to the order and endorsed by Charles A. Jacobs, and accepted by the said William M. Lambeth himself, dated the said fifteenth day of March, instant, for the sum of fifteen hundred forty-five dollars and eighty-three cents, and one-third each, and payable respectively at one, two, and three years from date.

3d. And finally the said purchaser hereby contracts to pay to the Union Bank of Louisiana the sum of two thousand two hundred thirty-one dollars and twenty-five cents, being the amount which the said Silas F. Hudson assumed to pay in the act of the fifteenth day of March, instant, aforesaid, as the proportion due by the said Kimball on the balance of the loan originally obtained from the said Union Bank of Louisiana, by Hudson and Clark, as holders of one hundred and five shares of the stock of said bank.

And in order that the present purchaser, William M. Lambeth, may be placed in precisely the same situation that the said Silas

H. Hudson put himself, according to the aforesaid act of sale from Edmond Kimball to him, and also in order that the said Silas F. Hudson may be discharged and exonerated from the liabilities by him incurred in the said sale, the said William M. Lambeth does hereby assume the same mortgages which the said Silas F. Hudson *des'd* assume, and which are minutely specified in the act of sale above referred to, namely: 1st. The mortgage in favor of the Union Bank of Louisiana, securing the one hundred and five shares of stocks above mentioned. 2d. And the mortgage in favor of Isaac Clark for three thousand dollars.

It is hereby agreed by and between the parties, that the said Silas F. Hudson shall, within the shortest delay, in order to confer on the said William M. Lambeth a clear and unquestionable title to the above described property, cause his wife to renounce in favor of said purchaser all her rights, of any nature or kind whatever, on the said premises.

Thus done and passed in my office, at the city of New Orleans, on the seventeenth day of March, eighteen hundred and thirty-six, in the presence of Frederic Prerost and Gustave D. Herbecourt, who have signed these presents with the parties, and me, the said notary, after reading the whole.

(Signed) SILAS F. HUDSON,
(Signed) N. W. LAMBETH. [SEAL.]
G. D. HENNECOURT,
F. PREROST.
(Signed) A. MAZUREAU,
Not. Pub.

A true copy. A. MAZUREAU,
Not. Pub.

Exhibit No. 10.—Filed with foregoing, 6th March, 1848.

Sale of Plantation, &c., by Wm. M. Lambeth to Robert Sewall, 25th January, 1841.

UNITED STATES OF AMERICA,
State of Louisiana, City of New Orleans.

Before me, Adolph Mazureau, notary public in and for this city and parish of Orleans, duly commissioned and sworn, and in the presence of the witnesses hereinafter named and undersigned, personally appeared William Meredeth Lambeth, of this city, who declared, that for the consideration and under the terms and conditions hereinafter set forth, he has sold, and does by these presents grant, bargain, sell, convey, transfer, assign, and set over, with a full guarantee against all troubles, debts, mortgage, claims, evictions, and donations, alienations, and all incumbrances of what nature or kind soever, unto Robert Sewall, of the parish of Iberville, here present and accepting for himself, his heirs and assigns, and acknowledging due delivery and possession—

First. The undivided half or moiety of a certain plantation *compose* of two lots of land situated and lying in the said parish of Iberville, on the north side of Bayou Goula, being of the land laid out and sold by the United States, and designated as lots numbers one and two, on the north of said bayou, said plantation having about ten arpents front on said Bayou Goula, with all the depth thereto belonging, so as to contain three hundred and four superficial acres, more or less.

Second. The undivided half or moiety of the double concession, containing about eight hundred superficial arpents, more or less.

Third. The undivided half or moiety of all and singular the following slaves, viz: Peter, Jack, Smith, Reuben, Henry, Whitman, Robert, Charles, Hutchinson, Lewis, Nathaniel, Frisby, George, Breeden, Jesse, Harry, John, Jackson, Cyrus, Nelly, Ellen, Maria, Detty, Flora and her child, Hannah and her child, Halby and her child, Emily, Jane and her child, Fanny, Little Fanny, Caroline, Sally Ann, Ann, Mary Ann and her child.

Fourth. The full and entire ownership and interest of the following eight slaves: Dennis, Bob, Tom, Jeff, Vincy, and Emma and her two children.

Fifth. And the undivided half or moiety of one hundred and five shares of the capital stock of the Union Bank of Louisiana, of one hundred dollars each, together with all profit and advantage to arise therefrom in any manner whatever, said stock having *original* been secured by Hudson & Clarke, the former proprietors of said plantation, by an act of mortgage passed before the undersigned notary on the twenty-third day of January, eighteen hundred and thirty-three.

The undivided half of the plantation, slaves and stock herein conveyed was acquired by the said William M. Lambeth from Silas *T.* Hudson, by an act passed before the undersigned notary, on the seventeenth day of March, eighteen hundred and thirty-six. The eight slaves sold in toto were purchased by said Wm. M. Lambeth from divers persons, and he hereby obligates himself to produce his title to the same, whenever required so to do.

To have and to hold the said undivided half of the lands, slaves and stock herein conveyed unto the said purchaser, his heirs and assigns, to their proper use and behoof forever. And the said vendor the said undivided half of said lands, slaves and stock, to the said purchaser, his heirs and assigns, shall and will warrant and forever defend against the lawful claims of all persons whomsoever by these presents; and the said vendor moreover subrogates the said purchaser to all the rights and actions of warranty which he has or may have against his own vendor, or against the vendors of his vendor, fully authorizing said purchaser to exercise the said right and actions in the same manner as he himself, the said vendor, might or could have done.

This sale is made for and in consideration of the total sum of forty-five thousand and fifty dollars, the purchaser having agreed to pay one thousand and fifty dollars as the premium on said stock, and forty-four thousand dollars for the balance of property and slaves herein described and conveyed. In part payment and deduction of said sum of forty-five thousand and fifty dollars, the said purchaser hereby assumes to pay to the Union Bank of Louisiana the sum of seventeen hundred six dollars and twenty-five cents, which is the half of a stock note or obligation for thirty-four hundred twelve dollars and fifty cents, due on the first day of March next ensuing the date hereof, the said sum of thirty-four hundred twelve dollars and fifty cents being the balance due on the loan originally obtained by Hudson & Clark, as stockholders of the Union Bank of Louisiana, and the said Robert Sewall hereby puts himself in the lieu and place of said vendor, in relation to the half of said stock note or obligation *assume* to the extent of one half the mortgage hereinbefore mentioned and granted by said Hudson & Clark.

And for the balance the purchaser has furnished the following promissory notes, viz:

Five promissory notes subscribed by Philip B. Key and Henry Johnson, jointly and severally, to the order of and endorsed by himself, said Robert Sewall, dated at the parish of Assumption, on the sixteenth day of January instant, each bearing eight per cent. interest per annum from date until paid, and being as follows: one note for five thousand five hundred thirty-six dollars and forty-one cents, including the interest, payable on the first of March, eighteen hundred and forty-two; one for five thousand nine hundred forty-seven dollars and seventy-three cents, including the interest, payable on the first of March, eighteen hundred and forty-three; one for six thousand three hundred sixty dollars and forty-nine cents, including the interest, and payable on the first of March, eighteen hundred and forty-four; one for six thousand seven hundred seventy-one dollars and eighty-one cents, including the interest, payable on the first March, eighteen hundred and forty-five; and one for seven thousand one hundred eighty-three dollars and thirteen cents, including the interest, and payable on the first March, eighteen hundred and forty-six.

Also five promissory notes this day subscribed by said Robert Sewall, to the order of , and bearing interest from maturity at the rate of ten per cent. per annum until final payment, and being of the following tenor: one for two thousand six hundred seven dollars and thirty-four cents, payable on the first of March, eighteen hundred and forty-two; one for two thousand eight hundred fifty-two dollars and twenty-seven cents, payable on the first of March, eighteen hundred and forty-three; one for two thousand four hundred thirty-nine dollars and fifty cents, payable on the first

March, eighteen hundred and forty-four; one for two thousand twenty-eight dollars and nineteen cents, payable on the first March, eighteen hundred and forty-five; and one for sixteen hundred and sixteen dollars and eighty-seven cents, payable on the first of March, eighteen hundred and forty-six.

All which notes were signed ne varietur by me, notary, for the purpose of identification with these presents, and were handed over to the said vendor, who hereby acknowledges to have the same in his possession.

And in order to secure the full and punctual payment of all the said notes at maturity, and of the eventual interest to accrue thereon, the property and slaves herein conveyed remain specially mortgaged and hypothecated in favor of the said William M. Lambeth.

The purchaser hereby binds himself not to alienate, incumber, mortgage or deteriorate the said premises and slaves to the prejudice of this mortgage, and hereby confesses judgment for the amount of said notes, to be paid as aforesaid.

The parties hereto have mutually dispensed with the production of the certificate of the judge and recorder of mortgages in and for the parish of Iberville, to show what mortgages may exist on the undivided half of the lands and slaves herein conveyed, and exonerate the notary from all liability on account of the execution of this act without such certificate.

The said seller declared that the plantation herein conveyed is the same as was mortgaged by the said Hudson and Clark, and then represented as being bounded on one side by lands belonging to Paul Hebert, and on the other side by lands of Joseph Dervins and Hamilton; and the said seller further declares, that for the consideration hereinabove set forth he sells his undivided half of all improvements, utensils, and things whatsoever attached to and connected with said plantation.

And next personally appeared Mistress Georgiana Slocum, the wife of said William M. Lambeth, of full age, and by her said husband duly authorized, who acknowledges that she is fully aware of the rights of married women on the property of their husbands, which said rights I, the said notary, did carefully explain to her out of the presence and hearing of her said husband, as it was my duty to do; and who further declared, that being well informed of the existence of an act of the legislature of this State of Louisiana, entitled "An act to limit the time in which married women, aged above twenty-one years, may retract renunciations by them made in favor of third persons of their matrimonial, dotal, paraphernal and other rights, and to authorize them in future to make valid renunciations," approved March 25th, 1835, she does, by these presents, of her own free will and accord, and without any compulsion or coercion of her said husband, renounce in favor of the said Robert Sewall, here present and accepting the same, all the matrimonial, dotal, paraphernal and other rights and privileges,

which, by virtue of the law or otherwise, she may have on the lands and slaves hereby conveyed:

1st. For the restitution and replacing of such dotal effects as were her property previous to marriage.

2d. For the restitution and replacing of such dotal effects as she may have acquired since by succession or donation.

3d. For the payment of such of her paraphernal property as shall have been appropriated by her said husband to his own use, or by which he may, in his individual capacity, have profiled.

4th. As a security for the obligations of her husband, as usufructuary of her paraphernal property.

5th. As an indemnity for the debts which she may have contracted with her husband, as also for the purpose of replacing such part of her separate property as may have been sold, and generally in virtue of all causes whatsoever.

The said appearer hereby binding herself, her heirs, to the said Robert Sewall, that she and they shall and will, at all times hereafter, acknowledge and sustain the validty of the foregoing sale, and of this renunciation.

Done and passed in my office, at the city of New Orleans, on this twenty-fifth day of January, eighteen hundred and forty-one, in the presence of John Crigg and George A. Jenkins, witnesses, who have signed these presents with the parties and me, notary, after reading the whole.

(Signed) ROB'T SEWALL,
W. M. LAMBETH,
GARGIANA LAMBETH.

J. CRAGG,
GEORGE A. JENKINS.

A. MAZUREAU,
Not. Pub.

A true copy. Attest:
(Signed) A. MAZUREAU, [SEAL.]
Not. Pub.

Demurrer of D. M. Hughes.—Filed 17th April, 1848.

In Circuit Court of the United States for the district of Louisiana, 1848.

DAVID M. HUGHES
vs.
UNITED STATES.

The defendant, David M. Hughes, by protestation, &c., doth demur to complainants' bill in the case aforesaid, for that said bill and the matters thereof, as the same are therein set forth, doth not present such a case as entitles complainants to any discovery or relief against this defendant.

Wherefore, and for divers other causes of demurrer apparent in said

bill, this defendant prays judgment, whether he shall make other and further answer to said bill, and prays to be dismissed with his reasonable costs in this behalf expended.

And for special causes of demurrer, defendant avers and shows the following:

1st. That, by the showing in said bill, this court has no jurisdiction of the matter presented as the subject of controversy between this defendant and Sewall and Hudson, being all citizens of Louisiana.

2d. Because, by the showing in said bill, the U. S., as complainants, have no interest whatever in the matter in controversy.

3d. That the case made by the bill shows that Robert Sewall and Franklin Hudson, who are made defendants in this bill, are in point of interest the only proper parties to complain against this defendant, and are not properly his co-defendants.

4th. Because, by the case made by the bill, the United States appear to litigate the *priort* right of one citizen against another citizen, without leave or authority to do so.

5th. Because there is no law to authorize the United States to invoke the courts of the United States to repeal and revoke and cancel a deed for land given by the United States to a citizen, when the whole price is acknowledged to have been received by the United States for the land sold.

6th. Because the complaint is in form an information by the district attorney of the United States, in behalf of the United States, and in behalf of Sewall and Hudson, for matters only cognizable by a court of equity on a bill in chancery, at the instance of the party against.

7th. Because the matter asserted as a pre-emption right to land on John Goodbee is in law no right of pre-emption.

8th. Because if the right asserted was originally good as a right of pre-emption in John Goodbee, it is shown by the bill to have been lost and forfeited as such right, for want of timely payment; and for many other defects, &c., in said bill appearing.

JOHN HENDERSON,
Sol. for Def't, Hughes.

I, John Henderson, an attorney and counsellor of the Supreme Court of the United States, do certify that, in my best judgment and opinion, I do verily believe the foregoing demurrer is well founded in point of law.

(Signed) JOHN HENDERSON.

David M. Hughes, the defendant and demurrant in this case, being duly sworn, deposeth and saith, that his preceding demurrer proposed to be filed in this suit is not interposed for delay, but that law and justice may be speedily adjudged.

(Signed) D. M. HUGHES.

Sworn to and subscribed before me, this 17th April, 1848.
ED. RANDOLPH,
U. S. Com'r.

Judgment on Demurrer.

Minutes.—December Term, A. D. 1848.

New Orleans, Wednesday, January 24th, A. D. 1849.

Court met pursuant to adjournment. Present, the Hon. Theo. H. McCaleb, district judge; absent, Hon. John McKinley, presiding judge.

UNITED STATES
vs. } 1,666.
D. M. HUGHES et als.

The court having duly considered the demurrer heretofore submitted on the 19th day of June, 1848, in the above entitled suit, it is ordered that the said demurrer be, and the same is hereby, sustained; and it is further ordered that the complainants' bill be dismissed.

Order allowing Appeal.

Minutes.—December Term, A. D. 1848.

New Orleans, April 10th, A. D. 1849.

Court met pursuant to adjournment. Present, Hon. Theo. H. McCaleb, district judge; absent, Hon. John McKinley, presiding judge.

THE UNITED STATES
vs. } 1,666.
D. M. HUGHES et als.

On motion of Thos. J. Durant, attorney of the United States for the eastern district of Louisiana, it is ordered that an appeal be allowed in this case in favor of the United States, from the judgment rendered on the demurrer in this case, filed by the defendants at the present term of the court, said appeal returnable to the Supreme Court of the United States at its next term hereafter.

Order for Recording Mandate.

April Term, A. D. 1851.

New Orleans, Wednesday, 30th April, 1851.

Court met pursuant to adjournment. Present, Hon. Theo. H. McCaleb, district judge; absent, Hon. J. McKinley, presiding judge.

THE UNITED STATES
vs. } 1,666.
D. M. HUGHES et als.

On motion of Logan Hunton, esq., dist. att'y, and on presenting

the mandate of the Supreme Court of the United States herein rendered, it is ordered that the same be filed and entered of record.

Mandate Supreme Court United States, No. 90, *December Term,* 1850.—Filed 30th April, 1851.

UNITED STATES OF AMERICA, *ss.*

The President of the United States of America to the honorable the Judges of the Circuit Court of the United States for the eastern district of Louisiana, greeting:

Whereas lately in the circuit court of the United States for the eastern district of Louisiana, before you, or some of you, in a cause between the United States, complainants, and David M. Hughes, Robert Sewall, and Franklin Hudson, a minor, by his tutor, Holmes Hutchison, defendants in chancery, the decree of the said circuit court was in the following words, viz:

"The court having considered the demurrer heretofore submitted on the 19th day of June, 1848, in the above entitled suit, it is ordered that the said demurrer be, and the same is hereby sustained; and it is further ordered that the complainants' bill be dismissed," as by the inspection of the transcript of the record of the said circuit court, which was brought into the Supreme Court of the United States by virtue of an appeal agreeably to the act of Congress in such case made and provided, fully and at large appears: And whereas in the present term of December, in the year of our Lord one thousand eight hundred and fifty, the said cause came on to be heard before the said Supreme Court on the transcript of the record, and was argued by counsel; on consideration whereof, it is now here ordered and decreed by this court that the decree of the said circuit court in this cause be and the same is hereby reversed; and this court proceeding to render such decree as the said circuit court ought to have rendered, doth order, adjudge and decree, that the patent made to David Michael Hughes, by the President of the United States, on the 16th day of April, A. D. 1841, for section 54, in township 10, of range 12 east, in the district of lands subject to sale at New Orleans, Louisiana, containing one hundred and seventy-five acres and forty-six hundredths of an acre of land, be and the same is hereby vacated and annulled; that the said David M. Hughes do, within one calendar month from the time of filing the mandate of this court in the said circuit court, surrender said patent to the clerk of said court; that the said clerk shall certify under the seal of the said court on the face of the said patent, that it is annulled by this decree, and then transmit the same to the Commissioner of the General Land Office, at Washington city; that the said David M. Hughes be, and he is hereby, forever enjoined from prosecuting any suit in law or equity on said patent as evidence of title. And it is further adjudged and decreed,

that this cause be, and the same is hereby remanded to the said circuit court, with directions to carry this decree into effect, and for such further proceedings to be had herein, in conformity to the opinion of this court, as to law and justice may appertain. Mar. 11:

You therefore are hereby commanded that such further proceedings be had in said cause, in conformity to the opinion and decree of this court, as according to right and justice and the laws of the United States ought to be had, the said appeal notwithstanding.

Witness the Honorable Roger B. Taney, Chief Justice of the Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and fifty.

(Signed) WM. THOS. CARROLL, [SEAL.]
Clerk of the Supreme Court of the United States.

Marshal's Return.

On the 2d day of May, 1851, exhibited to David M. Hughes this original mandate of the Supreme Court of the United States, and at the same time delivered to him a copy of the original mandate by handing the same to him in person, in the city of New Orleans.

Returned May 2d, 1851.

WM. S. SCOTT, *U. S. M.* [SEAL.]
By O. P. WATSON, *D'y U. S. M.*

Motion for leave to file Answer.

Minutes.—April Term, 1851.

New Orleans, Tuesday, 20th May, 1851.

Court met pursuant to adjournment. Present, Hon. Theo. H. McCaleb, dist. judge; absent, Hon. J. McKinley, presiding judge.

DAVID M. HUGHES
vs. } 1,666.
THE UNITED STATES.

On mandate of the Supreme Court of the United States, filed in this court on the first day of May instant, the defendant, David M. Hughes, came into court this day, and presented the answer of the defendant, Hughes, and asked leave to file the same, and put said case at issue on its merits, which answer is left in the hands of the clerk, to abide the order of the court in the premises, "and is hereto annexed."

Order refusing Application.

Minutes.—April Term, A. D. 1851.

New Orleans, Tuesday, 27th May, 1851.

Court met pursuant to adjournment. Present, Hon. Theo. H. McCaleb, dist. judge; absent, Hon. J. McKinley, presiding judge.

THE UNITED STATES
vs.
DAVID M. HUGHES et als. } 1,666.

The application herein made by the defendant, David M. Hughes, on the 20th instant, for leave to file his answer in this case, having been argued and submitted to the court, and the court having considered the same, doth now order that said application be dismissed, and leave refused.

Final Decree.

Judgment Docket.

Circuit Court of the United States, 5th circuit and eastern district of Louisiana.—April Term, A. D. 1851.

New Orleans, Wednesday, 4th June, 1851.

Court met pursuant to adjournment. Present, Hon. Theo. H. McCaleb, district judge; absent, Hon. J. McKinley, presiding judge.

THE UNITED STATES
vs.
DAVID M. HUGHES. } 1,666.

In conformity to the mandate and decree of the Supreme Court herein filed and recorded, it is ordered, adjudged and decreed, that the patent made to David Michael Hughes, by the President of the United States, on the 16th day of April, A. D. 1841, for section 54, in township 10, of range 12 east, in the district of lands subject to sale at New Orleans, Louisiana, containing one hundred and seventy-five acres and forty-six hundreths of an acre of land, be and the same is hereby vacated and annulled; that the said David M. Hughes do, within one calendar month from the time of the filing of the said mandate of the Supreme Court of the United States in this court, to wit, from the 30th day of April, 1851, surrender the said patent to the clerk of this court, and that the said clerk shall certify under the seal of this court, on the face of said patent, that it is annulled by the said decree of the Supreme Court of the United States, and then transmit the same to the Commissioner of the General Land Office at Washington city, that the said David Michael Hughes be, and he is hereby, forever enjoined from prosecuting any suit in law or equity on the said patent, as evidence of titles.

Judgment rendered 4th June, 1851.
" signed 9th June, 1851.

THEO. H. McCALEB, [SEAL.]
U. S. Judge.

Motion and Order of Attachment.

Minutes.—April Term, A. D. 1851.

New Orleans, Wednesday, 4th June, 1851.

Court met pursuant to adjournment. Present, Hon. Theo. H. McCaleb, district judge; absent, Hon. J. McKinley, presiding judge.

THE UNITED STATES
vs. } 1,666.
DAVID M. HUGHES.

On motion of Logan Hunton, U. S. dist. att'y, and on showing to the court that the mandate and decree of the Supreme Court of the United States was filed and entered of record in this court on the 30th day of April last, and that the said original mandate and decree was exhibited to, and a duly certified copy thereof served on the defendant, David Michael Hughes, by the marshal of this district, on the 2d day of May last, and that the said David M. Hughes has failed to surrender to the clerk of this court, in compliance with said decree and mandate, the patent therein described, and that the time allowed him by said decree within which to make such surrender has expired, it is ordered that an attachment issue against said David Michael Hughes, returnable on Saturday next, at 10 o'clock a. m., to show cause why he should not be punished for contempt in neglecting to comply with said decree.

Attachment for Contempt.

UNITED STATES OF AMERICA.

Circuit Court of the United States, 5th circuit and eastern district of Louisiana.

The President of the United States to the Marshal of the United States for the eastern district of Louisiana, greeting:

THE UNITED STATES
vs. } No. 1,666.
DAVID M. HUGHES.

Whereas the defendant, David Michael Hughes, is standing out in contempt of the decree of our said court in the above entitled cause, in failing to surrender to the clerk of this court the patent made to him by the President of the United States on the 16th day of April, 1841, for section 54, in township 10, of range 12 east, in the district of lands subject to sale at the New Orleans, Louisiana, containing $175\frac{46}{100}$ acres of land, within the time specified in our said decree: Now, therefore, you are hereby commanded to attach the body of the said David Michael Hughes and him safely keep, so that he be and

appear before our said court on the 7th day of June inst., at 10 o'clock a. m., then and there to show cause, if any he can, why he should not be punished for a contempt of our said court, in failing to surrender said patent; and further, to show cause why he should not surrender the same. Herein fail not, and have you then and there this writ.

Witness the Hon. Roger B. Taney, Chief Justice of the Supreme Court of the United States, at the city of New Orleans, this 4th day of June, 1851.

[SEAL.]

J. W. GURLEY, *Clerk.*

Marshal's Return.

Rec'd 4th June, 1851, and on the 7th inst. brought the within named David M. Hughes into court as commanded. Return June 7th, 1851.

CHAS. A. LABUZAN,
D'y Marshal.

Motion and Order for Appeal.

Minutes.—April Term, A. D. 1851.

New Orleans, Wednesday, 4th June, 1851.

Court met pursuant to adjournment. Present, Hon. Theo. H. McCaleb, dist. judge; absent, Hon. J. McKinley, presiding judge.

THE UNITED STATES
vs.
DAVID MICHAEL HUGHES. } 1,666.

Came the defendant, David Michael Hughes, by his solicitor, John Henderson, esq., and representing to the court that he felt aggrieved by the decree this day rendered herein, moved an appeal from the same, returnable to the next term of the Supreme Court, on his giving the bond and security required by law. Whereupon, on consideration thereof, the court being of opinion that the said decree so rendered is final and conclusive, and that no appeal can be taken therefrom, doth refuse the same, and order that the said motion be overruled.

Order on Attachment.

Minutes.—April Term, A. D. 1851.

New Orleans, Saturday, 7th June, 1851.

Court met pursuant to adjournment. Present, Hon. Theo. H. McCaleb, district judge; absent, Hon. J. McKinley, presiding judge.

THE UNITED STATES
vs.
DAVID MICHAEL HUGHES. } No. 1,666.

The defendant, D. M. Hughes, being brought into court under process of attachment, surrendered the patent called for, under

protest now filed, with leave of court. Whereupon, it ordered that the attachment be discharged.

Protest of D. M. Hughes.—Filed June 7th, 1851.

DAVID M. HUGHES
vs.
THE UNITED STATES.

On process issued against Hughes for contempt of court, in not surrendering his certain land patent into court to be cancelled, in pursuance of the mandate of the Supreme Court of the United States in the case of the U. S. vs. Hughes, Sewall, and Hudson, which mandate is of date and in suit No. 1,666 of the circuit court of the U. S. for the eastern district of Louisiana.

This respondent, for answer in this behalf, first protests against this process against him because it emanates on the assumption that the mandate of the Supreme Court is final and conclusive of the matter therein advised; whereas respondent saith that said mandate in this regard was and is but a judgment nisi or hypothetical, not intending to deprive respondent of his right to answer the bill filed against him in said suit after the Supreme Court of the United States adjudged his demurrer insufficient; but that said judgment was directory to this court, to be extended as proper and final in the event said Hughes shall not further answer.

2d. Because respondent has been denied in this court his legal, equitable, and constitutional rights to file his answer and to be heard on the merits of the case set forth in the bill in equity against him in the case, after his demurrer to said bill has been overruled, as by the rules of the court and by the law and practice in such cases is allowed.

3d. Because respondent has been denied his legal, equitable, and constitutional rights, by the act of this court in refusing to allow him an appeal from the final order and decree rendered in this case in this court since the mandate aforesaid has been filed.

4th. Because respondent has been denied his legal, equitable, and constitutional rights in this court, in not permitting him to suspend the execution of the mandate of the Supreme Court of the U. S. in this court by a suspensive appeal until the construction of the appellate court upon the mandate aforesaid and the rights of respondent be heard in defence on the merits of the case could be made known and adjudged and certified to this court.

With these protests and obligations to the order and action of this court in the matter of this process for contempt, if this court shall notwithstanding consider, and adjudge, and require that respondent shall without further hearing surrender his said land patent for cancellation, disclaiming, as he verily does, all purpose of disrespect or contempt to the power and process of this court, doth herewith produce and tender in court the said land patent,

for such disposition thereof as this honorable court shall order and determine.

JOHN HENDERSON, JR.,
Att'y for Hughes.

Affidavit of D. M. Hughes, (annexed.)

David M. Hughes being duly sworn, deposes and says, that he expressly declares that what he has done in the premises appertaining to the case of the United States vs. himself, concerning a certain land patent, has been in good faith, sanctioned, as he avers and is informed by counsel, by the laws of Congress, the rules of the circuit court of the United States, and the Constitution of the United States; and in no wise has this affiant intended a contempt of the process of this honorable court, but, on the contrary, he says what he has done has been simply to base the controversy concerning said land patent determined on its merits and on a fair hearing of the premises by this honorable court, pursuant to the laws of the land in such case made and provided.

(Signed) D. M. HUGHES.

Sworn to and subscribed before me this 7th June, 1851.

(Signed) J. W. GURLEY, *Cl'k.*

Order allowing withdrawal of Exhibits.

Minutes.—December Term, A. D. 1852.

New Orleans, Wednesday, 30th March, 1853.

Court met pursuant to adjournment. Present, Hon. Theo. H. McCaleb, district judge.

UNITED STATES
vs. } No. 1,666.
HUGHES and others.

On application of H. Hutchinson, esq., it is ordered that he have leave to withdraw from file Exhibits 5, 6, 7, 8, filed with the answer in this cause, on leaving certified copies thereof.

Order to record Mandate.

Minutes.—November Term, 1853.

New Orleans, Thursday, 23d March, 1854.

Court met pursuant to adjournment. Present, Hon. Theo. H. McCaleb, district judge; absent, Hon. J. A. Campbell, presiding judge.

THE UNITED STATES
vs. } No. 1,666.
DAVID M. HUGHES.

On motion of John Henderson, esq., solicitor for defendant, and

on his presenting the mandate of the Supreme Court of the United States herein rendered, it is ordered that the same be filed herein and recorded; which mandate is in words and figures as follows, viz:

Mandate.—Filed 23d March, 1854.

No. 134.—December Term, 1853.

UNITED STATES OF AMERICA, *ss.*

The President of the United States of America to the honorable the Judges of the Circuit Court of the United States for the eastern district of Louisiana, greeting:

Whereas lately, in the circuit court of the United States for the eastern district of Louisiana, before you, or some of you, in a cause between the United States, complainants, and David M. Hughes, Robert Sewall, and Franklin Hudson, a minor, by his tutor, Holmes Hutchinson, defendants, in chancery, the decree of the said circuit court was in the following words, viz:

"The court having considered the demurrer heretofore submitted on the 19th day of June, 1848, in the above entitled suit, it is ordered that the said demurrer be and the same is hereby sustained; and it is further ordered that the complainants' bill be dismissed," as by the inspection of the transcript of the record of the said circuit court, which was brought into the Supreme Court of the United States by virtue of an appeal, agreeably to the act of Congress in such case made and provided, fully and at large appears:

And whereas, in the present term of December, in the year of our Lord one thousand eight hundred and fifty-three, the said cause came on to be heard before the said Supreme Court. On consideration whereof, it is ordered, with the consent of the Attorney General of the United States and the counsel for the appellees, that the case be reinstated on the docket of this term, and the judgment heretofore rendered on the demurrer be stricken out, and that the case be remanded to the circuit court, with directions to that court to permit the appellee, who was the respondent, to withdraw his demurrer to the bill, and put in an answer thereto; and, thereupon, upon issue being joined between the parties to proceed in the case according to the rules and practice of the chancery court, allowing to each party an opportunity for taking testimony, and bringing the case to final hearing in the circuit court.

Dec. 7th, 1853.

You, therefore, are hereby commanded that such further proceedings be had in said cause, in conformity to the order and decree of this court, as according to right and justice and the laws of the United States ought to be had, the said appeal notwithstanding.

Witness the Honorable Roger B. Taney, Chief Justice of the Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and fifty-three.

(Signed) WM. THOS. CARROLL,
Clerk of the Supreme Court of the United States.

Answer.—Filed 23d March, 1854.

In Circuit Court of the U. S. for the district of Louisiana.

D. M. HUGHES ad. UNITED STATES.

This defendant, David M. Hughes, saving and reserving to himself all exceptions to the many errors and insufficiencies of the complainant's bill in this behalf, proceeds to answer so much as he is advised it is material for him to answer unto, of the matters and things in said bill alleged, and for answer saith:

That he believed it true that some time previous to January, 1823, one John Goodbee did give a notice in writing to the register of the land office in New Orleans, that he claimed a preference right of purchase to a certain tract of land which he designated as lot No. 1, lying on both sides of the Bayou Goula, but principally on the north side. But respondent does not admit, but denies, that said Goodbee did furnish satisfactory proof to the register of said land office; that he was entitled by virtue of the act of 12th April, 1814, to have preference as a purchaser of the said lot, which Goodbee described and set forth in his notice and proofs. And respondent answering on this point, saith the Exhibit A is no proof of the fact referred to, and is not the answer or act of decision of said register in said Goodbee's application referred to.

Respondents denies, also, that the said lot as No. 1, lying principally on the north side of the Bayou Goula, was supposed at that time to contain 160 acres of land, and that its contents could not at that time be better ascertained than by this act of supposition.

The lot as now surveyed was then surveyed with the same lines, boundary and area, and the alleged want of connections of the township plots, &c., is interposed as mere subterfuge, and is in no degree explanatory of the matter it pretends to explain. And respondent further answering, denies that said Goodbee did, on the 22d February, 1822, pay to the land receiver at New Orleans two hundred dollars "for the one hundred and sixty acres of land which the said tract or lot of land was supposed to contain at that time, to the best knowledge of the said Goodbee and the said register and receiver at New Orleans," or that any such fact is shown by Exhibit B filed with the bill; but the facts of this transaction respondent will hereafter disclose. Respondent denies also that on the payment of said two hundred dollars by Goodbee, the land re-

ceiver did issue to Goodbe a certificate "declaring and certifying, as was usual and legal in such cases, that the said Goodbee had a right to a preference in the purchase at private sale of the aforesaid lot, piece or parcel of land, then only known and described as lot No. 1, lying principally north of Bayou Goula," and an exhibit of the receipt hereinafter shown by this respondent, referred to above as a certificate, will expose the fallacy of this averment.

Respondent denies also that when the connections of the public surveys were completed, &c., the said lot or parcel of land was found to be accurately described as lot No. 1, on the north side of the Bayou Goula, in section No. 54, T. 10 W., R. 12 E. On the contrary, respondent avers that the "said lot," at all previous times claimed and described as lying on both sides the Bayou Goula, though principally on the north side, could not be the same lot, and could not be accurately described as the same by a description which placed the whole of said lot on the north side of said bayou.

Respondent denies also that it was by the return aforesaid found to contain 175 $\frac{46}{100}$ acres of land. On the contrary, respondent avers that the lot claimed by respondent, as per patent, Ex. E with complainant's bill, and accurately described as sec. 54, T. 10, R. 12 E., &c., was surveyed and subject to be computed as now surveyed and computed before the pretended purchase by Goodbee, though respondent avers and believes that the pretended claim made by Goodbee, as laying on both sides of Bayou Goula, was not then and has never since been surveyed, as claimed and allowed by the register; though respondent avers, and so the truth is, that the survey, as then made and computed, or readily computed, (being the same as now remaining computed,) did then designate, as No. 1 on both sides of the bayou, the same continuous parallel of survey, a part of which is now separately designated on the north side of the bayou as section 54; but which then extended across the bayou, and included what is now on the south side s. 83, and was then No. 1 on the south as well as on the north side, and which No. 1 on both sides of the bayou contained about 300 acres of land, all which appears by a certified portion of the map of survey, including this claim, and which is exhibited as part of respondent's answer, marked No. 1.

Respondent denies also, both as matter of law or fact, that by virtue of said Goodbee's acts of notice, proof, and payment of $200 on Feb'y, 1822, or in virtue of any certificate then given to him, that he either became entitled to enter, or did in fact enter, "the said land in controversy, or that he had then established and secured any preference right to the lot of land since patented to this defendant; and respondent again denies the validity of the pretended excuse or explanation offered by complainant in behalf of Goodbee's failure to pay for only 160 acres of land, though claiming more, and respondent avers and verily believes this pretence

about the connection of the public survey was and is wholly *and* after-thought and subterfuge interposed in behalf of Goodbee, with an unbecoming generosity on the part of the U. S., as complainant, in Goodbee's favor, and not clearly consistent with an impartial equity between their citizens. For respondent avers that the complainants well know, and such is the truth, that the connection of these surveys was made long before the sale of said section 54 to this defendant in 1836, and, of course, many years before the pretended final payment made in Goodbee's behalf, and since his death in 1846, as per complainant's Exhibit D.

Respondent denies also that the United States, or its land officers, had any right to receive payment of Goodbee's alleged assignees for any pre-emption right to which Goodbee might be entitled; and he denies, also, all right on part of U. S. or its officers to receive pay for land in 1846, as per complainant's Ex. D, which had been sold to this defendant in 1836, and patented to him in 1841, as per compl't's Ex. E.

Respondent admits, that in the year 1836 he became the purchaser of the tract of land specified in his patent, of which he believes complainant's Exhibit E is a true copy. But he denies generally and specially any and all charges and insinuations imputed in said bill, of suggestions and representations, as having been made by defendant to land officers in New Orleans or elsewhere, respecting the fact, whether said section 54 was or was not vacant lands in 1836, when sold to respondent, or of any representation of any kind, either true or false, to induce said officers, or any of them, to make the sale of said section 54. And especially does respondent deny all charges and insinuations of fraud and false representations against respondent in said bill contained in any way, from the manner charged and insinuated against him; nor can this respondent imagine or conceive from what disinterested functionaries of the government any matter has been supplied, giving any countenance or warrant to these charges and insinuations against the respondent. But respondent does expressly charge the facts in general respecting the acts, doings, and representations, and documents, on which the government affects in its neutrality of position to set forth the origin and progress of the claim to Goodbee, the character and identity of land, as at first claimed, and as now claimed, to be materially perverted from the truth from beginning to end. And respondent denies there was any error committed by any one in selling to respondent the land specified in his patent aforesaid; and he denies that the government of the United States have any interest in the matter put in issue by their bill, or that they have incurred any equitable obligation to assist one citizen to take from another citizen either his property or good name, or take from respondent his title to section 54 to

satisfy such claim as was set up by Goodbee in his lifetime, and now prosecuted for the benefit of his assignees.

Respondent protests also, that the said Sewal and Hudson, who are shown to be the only parties interested adversely against the title of this respondent, shall be permitted to occupy the place of co-defendants with this respondent, and so to make out by their evidence and confession their own title to the prejudice of the title of this respondent.

And respondent further protests against the jurisdiction of this court to try any matter of interest in this case between respondent and the said Sewall and Hudson, being all shown to be citizens of the same State of Louisiana.

Respondent denies also, that any one having any authority to do so has ever demanded of him the surrender of his patent, or offered to repay him back his money paid for said S. 54. On the contrary, respondent is informed and believes his patent is regarded at the General Land Office as the proper legal title for the land it covers.

He admits it true that he has commenced suit for the recovery of said lands in the State courts; that he obtained a judgment in the inferior court and in the supreme court; that a re-hearing was granted by the supreme court, and he hopes and expects to obtain final judgment thereon when further heard again.

In respect to the circumstances and manner by which respondent became purchaser of said sec. 54, he states and shows, that in the month of May, 1836, he saw in a newspaper of the city of New Orleans called the Bee, and then being currently published for several successive numbers, an advertisement, of which a copy is herewith filed as part of this answer, marked Exhibit No. 2. Respondent then reviews nothing of the causes for such advertisements, nor of any involvement of the title to the land advertised. Appearing at the time and place indicated by such notice to enter said tract of land, he, defendant, found other persons there for the same purpose. The register, B. Z. Canonze, perceiving a conflict of applicants, put up the land at public outcry to the highest bidder. Respondent bid the price of 1 25 per acre, and no one bidding more, it was knocked down to respondent as purchaser, and for which he paid his money, and has received his patent as aforesaid. Respondent did not then know, nor had he ever heard of any claim as now set up by Sewal and Hudson in behalf of the said Goodbee, nor was any map or sale book shown to him, or inspected by him, which gave any notice of any kind to this effect, nor was any notice to the like effect given to him at the time he went to enter the said land by any person or in any form, nor did he then know where said land was situated.

Wherefore defendant saith that he is an innocent purchaser, for

valuable consideration, without notice of any sort in the said John Goodbee to the land purchased by respondent at any time, till long since he paid his money therefor.

And respondent holding the legal title for said land, claims the protection of the law as in such cases adjudged.

Respondent further answering, saith and declares the truth to be, that he is informed and believes that the said John Goodbee never had any right or claim whatever as a pre-emptioner to the land in controversy. The notice given by Goodbee is without date, but the affidavits accompanying it of 1819. The notice and proof claims it as a purchase by Goodbee, as a settlement in 1813, of a man by the name of Beedle, and the whole claim, as made and proved, respondent believes and is informed was illegal and unauthorized.

The claim and proof is for settlement on both sides the Bayou Goula, and of unsurveyed lands. The register certified that Goodbee had established a "pre-emption right to the land claimed," and that he was entitled to 160 acres superficial, "subject, however, to the sectional and divisional lines" to be run, &c., all which is seen by certified copies from the register's office herewith exhibited as part of this answer, Nos. 3 and 4.

In four days after the allowance of this claim, Goodbee obtained his receipt of payment for 160 acres superficial in his pre-emption right, (designated as No. 1 by the surveyor,) and "according to the certificate of the register, No. 8," &c.; a certified copy of which receipt is herewith filed as Exhibit No. 5.

Thus far respondent shows that the claim was for a settlement on both sides the bayou. The register certified the right to the "land claimed," and the receipt was for payment of the land, according to the certificate. The claim allowance and receipt was for 160 acres superficial, and the receipt states the land as designated by the surveyor No. 1, and the survey herewith shown as Exhibit No. 1 shows lot No. 1, like the settlement claimed, lay on both sides of the bayou; but when the land officers booked this claim, they described it as lying on the Mississippi river, so that the entry books of the land offices in New Orleans never contained a registry of this claim as on the Bayou Goula at all, as is seen by complainant's Exhibit B, until long since defendant obtained his patent for section 54, as per complt's Exhibit E. Besides this fact of the alleged pre-emption right to Goodbee appearing to be registered as a claim on the Mississippi river, and not on the Bayou Goula, and so exhibited on the books and maps at the office, the section 54 on the Bayou Goula as vacant land, respondent does expressly charge the truth to be, that when he purchased section 54, in 1836, as before shown, that which had been designated as lot No. 1, on both sides of the bayou, in 1822, had, before 1836, been divided and designated section 54, on the north side, and sec-

tion 83, on the south side. But up to this period no act of allowance had taken place in the land office fixing Goodbee's claim on the north side of the bayou at all, and it never had claim or registration or proven existence, placing and bounding it by the lines of section 54, and all the statements of the bill to the contrary of this are fallacious and untrue.

This land, included in section 54, so continuing apparently vacant, and, as respondent contends, in all truth and legal contemplation was really vacant, was advertised as per Ex. No. 2, and by reasons of the instructions and authority referred to in the register's letter to the Gen'l Land Office, of 3d August, 1836, a certified copy of which is hereunto exhibited as No. 6, as part of this answer.

In pursuance of the 9th instruction of the General Land Office of the 1st January, 1836, respondent is informed and believes that the register and receiver at New Orleans had good and sufficient reason for believing, from all the evidence appearing on all the maps and books of their office, that section 54, since sold to respondent, was improperly withheld from entry, being vacant and unsold land; and in making sale of the same, as before shown, said officers construed the facts and the laws rightly, and but obeyed the orders of the land office department legally and properly given. After respondent's purchase as aforesaid, the effort began, and has since been persevered in, to fix this pre-emption on the north side of the Bayou Goula, and in section 54. Hence, on the 3d April, 1836, the assignees of Goodbee, with such due diligence and good faith as the bill sets forth, first discovered that the connections of the public surveys in the Bayou Goula district had been made, and this discovery first admonished them that this pre-emption was in truth and verity properly located on the north side of the bayou. Its precise boundaries were also for the first ascertained to be the boundaries of section 54, and as the claim had grown with time from 160 to 175.46, the connections of the public surveys induced the discovery that all this land, now for the first claimed as Goodbee's pre-emption, had not been paid for by him, and hence the receipt, as per complainant's Exhibit D; and this respondent is informed and believes that this receipt, which represents the money to have been paid by Goodbee, is not true in this respect, but that said Goodbee was dead previous thereto. Respond't charges also, and such the truth is, that the patent certificate of the 3d April, 1846, is not true in its recitals and averments in setting forth that John Goodbee, on 26th February, 1822, purchased of the register of this office the lot No. 1, north side of Bayou Goula, or section 54, T. 10, R. 12 E., containing 175.46 acres, amounting to 219.32, for which said Goodbee has made payment; that these recitals are not true as set forth. Respondent avers he has shown from the records of the land office, and is partly

shown by complainant's bill, why these facts should be so perverted. Defendant does not know, but he charges and verily believes, that the first act of allowing this pre-emption was without legal authority, and a fraud in law, and these acts of perverting the truth, as per Exhibit D of complainant's bill, by whomsoever instigated, or with whatever motive, have in the matter of perversion a fraudulent tendency, and having against respondent's title, and are unjust and illegal as they are false.

Respondent admits, that so far as Goodbee's pretended claim to a pre-emption was registered in the land office in New Orleans, as a claim on the Mississippi river, and leaving the Bayou Goula lots apparently vacant, and for which, besides complainant's Ex. B, see also Exhibit No. 7 filed with this answer, it might or might not have been the mistake of only the land officers.

But respondent avers he bought the lands as so apparently vacant by the records, and without notice to the contrary, and for this reason his title is paramount to any claimed by complainant for said Goodbee. Besides which, respondent denies that Goodbee's claim was legal and in good faith at first; or, if it was, then defendant saith it did not cover section 54, but, at most, only a part thereof; and if said claim was originally good as a pre-emption, respondent saith it was forfeited because sold by Goodbee before paid for, and because sold by the United States to defendant before paid for as a pre-emption; and because no right of pre-emption attached on such form and subdivision of the public lands as section 54; and because defendant has the legal title for valuable consideration without notice; for in respect to complainant's Exhibit C, defendant saith that he never saw the tract-book therein referred to, containing pencil-marks, &c., without date; and if marked as stated, denies such marks are an authorized registration, and denies he entered the land by any office plat whatever.

And the defendant answers the several interrogatories as follows:

To the 1st int'y he says: That said land was bid off at public outcry on the 12th of May, 1836, at the register's office in New Orleans, and in this form and manner only did he make the entry.

2d. Respondent did not *rep.* to the register said land was subject to sale at private entry, but only carried it himself, by the register's advertisement before shown, as Exhibit No. 2.

3d. Respondent did not then know that said land had been sold to John Goodbee, and had not then, at the time of said purchase, ever heard of such things, and now denies the fact.

4th. Respondent admits he did procure the patent referred to.

5th. Respondent has never been called upon to restore and give up said patent to the proper officers, by any officer authorized to demand the same, and the proper officers of the United States never informed him his patent was erroneously issued, nor offered to refund him his money paid for said land.

6th. Respondent has never had occasion to refuse to give up said patent; but he doth now positively refuse to do so on the demand of any one.

7th. Respondent is prosecuting his suit in the supreme court of Louisiana for the possession of said land, and the said Robert Sewall is defendant to said suit.

8th. Respondent admits that after paying for said land, and before he got his patent, he did have information of the adverse claim by Sewal to the land in controversy, but without distinct knowledge of its particulars. But he certainly had no knowledge at the sale of his patent to Goodbee in 1841 of land bought in Goodbee's name in 1846, as certified per compl't's Exhibit D.

9th. Respondent believes said John Goodbee is now dead, and though not informed of the date of his death, is informed and believes he was dead before and at the time, when, by compl't's Ex. D, he paid the money receipted for 3d April, 1846.

10th. Respondent says he did not know, and was not informed at the time he purchased said land in the manner before shown, that said land was in possession of Sewal and Hudson, or any other person claiming it as owner or owners.

11th. Respondent believes said land is now in possession of Robert Sewal, claiming it for himself and Franklin Hudson. As to what title Sewal and Hudson claim by respondent knows nothing, except by the showings made in this suit before referred to in the State court, and by which through several conveyances they professed to derive title from Goodbee. But respondent is advised and believes the documents and conveyances so shown give no title whatever to the premises in controversy.

JOHN HENDERSON,
Sol. for Def't.

David M. Hughes being duly sworn, deposeth and saith: That the facts, matters, and things set forth in his preceding answer are correct and true as therein stated, to the best of his knowledge, remembrance, information, and belief.

D. M. HUGHES.

Sworn to and subscribed before this 17th April, 1848.
ED. RANDOLPH,
U. S. Comm'r.

[*For plat marked Exhibit No.* 1, *see original, page* 114.]

Exhibit No. 2, *with Hughes's Answer.*

(Copy.)

Notice.

Lot No. 54, in T. 10, of R. 12 east, having been offered for sale but subsequently reserved, notice is hereby given that said lot is

subject to private entry, and that I will receive applications for the same at twelve o'clock m., on the 12th day of May next.

April 8th.

B. S. CANNONZE,
Register Land Office S. E. District of Louisiana.

Exhibit No. 3, *with Hughes's Answer.*

LAND OFFICE,
Southeastern District of Louisiana.

To the Register and Receiver of the Eastern District of Louisiana:

GENTLEMEN: I apply to become the purchaser of a tract of land by virtue of settlement under the act of Congress of the 12th April, 1814, situated as follows: in the parish of Iberville, on the north side of the Bayou Goula, designated as No. 1 by the surveyor, and is the same land which was inhabited and cultivated by Daniel Beedle or Biddle in the year 1813, under whose settlement I claimed by purchase.

This land belongs to the United States, and is not rightfully claimed by any other person, neither has said Biddle removed from the State. The land claimed has not been surveyed according to law, but I apply for the right of pre-emption to one hundred and sixty superficial acres, at the price provided by law, and offer proof of the facts set forth.

(Signed) JOHN GOODBEE.

No. 8.

The applicant having proven to the satisfaction of the register and receiver for the eastern district of Louisiana, that he has a pre-emption right to the land claimed, I, in consequence, certify that he is entitled to one hundred and sixty superficial acres of land, as applied for; subject, however, to the sectional or divisional lines to be hereafter *seen*, under the authority of the United States.

February 22d, 1822.

(Signed) SAM. H. HARPER, *Register.*

REGISTER'S OFFICE, *New Orleans.*

I, Louis St. Martin, register of the land office at New Orleans, do hereby certify the foregoing application and certificates to be true copies of the originals on file in my office.

In faith whereof I hereunto subscribe my name, this 25th day of March, 1848.

L. ST. MARTIN, *Register.*

(*Endorsed:*)

No. 8. John Goodbee's claim settlement-right. Order of survey, issued Oct. 27th, 1825.

REGISTER'S OFFICE.

The above is a true copy of the endorsement on the original application and certificate on file in my office.

New Orleans, March 25th, 1848.

L. ST. MARTIN, *Reg'r.*

Exhibit No. 4, *with Hughes's Answer.*

LAND OFFICE,
Southeastern District of Louisiana.

Before me, John Dutton, judge, in and for the parish of Iberville, personally appeared Charles Cox, who being duly sworn on the Holy Evangelist, declares and says that Dan'l Bedle occupied and cultivated a tract of land lying on the Bayou Goula, in the parish of Iberville, in the year 1813; that the said tract claimed lies partly on one side of the said bayou (principally on the north side) and partly on the other side or south side of said bayou, and about at the distance of three miles from the Mississippi.

(Signed) CHARLES his ⋈ mark. COX.

Sworn and subscribed before me, this 25th January, A. D. 1819, at my office, in the parish of Iberville.

JOHN DUTTON,
Judge of the Parish of Iberville.

Likewise came before me, judge aforesaid, Philip Stope, who being duly sworn as the above named deponent, saith that the said Daniel Biddle or Bedle occupied and cultivated the tract described in the preceding declaration, in the year one thousand eight hundred and thirteen.

PHILIP his ⋈ mark. STOPE.

Sworn and subscribed before me, this 7th day of April, 1819.

JOHN DUTTON,
Judge of the Parish of Iberville.

REGISTER'S OFFICE, *New Orleans.*

I, Louis St. Martin, register of the land office at New Orleans, do hereby certify the foregoing affidavits to be true copies of the original ones on file in my office.

In faith whereof I hereunto subscribe my name, this 25th day of March, 1848.

L. ST. MARTIN, *Register.*

Exhibit No. 5, with Hughes's Answer.—Def'dt's warrantor's evidence. Receiver's receipt to John Goodbee, marked Y; receiver's receipt to W. M. Lambeth and S. F. Hudson, marked X.

Receipt marked Y.

No. 5. RECEIVER'S OFFICE,
New Orleans, Feb. 26th, 1822.

Rec'd of John Goodbee two hundred dollars, being the purchase-money for one hundred and sixty superficial acres of land in the parish of Iberville, (designated as No. 1 by the surveyor,) to which he has a pre-emption right, according to the certificate of the register No. 8, exhibited to me—160 acres, at $1 25 cts., $200. Original.

(Signed) J. J. McLANAHAN, *Recorder.*

Filed 9th Oct., 1845.

(Signed) PAUL DEBLIEUX, *Clerk.*

Receipt marked X.

Original, No. 976.

RECEIVER'S OFFICE, LA., EASTERN DISTRICT LOUISIANA,
New Orleans, June 14th, 1836.

Received from Wm. M. Lambeth and S. F. Hudson, of the parish of Iberville, the sum of four hundred and fifteen $\frac{98}{100}$ dollars, being in full of the purchase-money of his pre-emption right, by virtue of an act of Congress authorizing the inhabitants of Louisiana to enter their back land, "approved 15th June, 1832," to a tract of land adjacent to and back of front, situate in township 10, range 12, and containing three hundred and thirty-two $\frac{78}{100}$ superficial acres, at one dollar and twenty-five cents, as per register's certificate numbered 976, described as lot No. 1, section No. 47.

(Signed) MAURICE CANNON,
Receiver of Public Moneys.

Filed 9th October, 1845.

(Signed) PAUL DEBLIEUX, *Cl'k.*

SUPREME COURT OF THE STATE OF LOUISIANA, *East. Dist.*

I hereby certify the foregoing to contain a true extract from the record of the proceedings had in the late fourth district court of the parish of Iberville, in a certain suit wherein "David M. Hughes was plaintiff and Robert Sewall was defendant," which record is on the files of this court under No. 6,011.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court, at the city of New Orleans, this twenty-fifth day of March, in the year of our [SEAL.] Lord one thousand eight hundred and forty-eight, and of the independence of the United States of America the 72d.

EUGENE LASERE, *Clerk.*

Exhibit No. 6, with Hughes's Answer.

Land Office, southeastern district La.

LAND OFFICE,
New Orleans, August 3d, 1836.

SIR: Enclosed you will find the account of the Bee, for advertising lot No. 54, in township No. 10, range No. 12 east, (in virtue of the 9th section of your circular of 11th January, 1836,) and also for publishing the names of the persons claiming the benefit of the pre-emption law, (in virtue of your letter of the 29th February, 1836.) An order of payment is demanded by Mr. Bayon, proprietor of the Bee, for the amount of said account.

I am, sir, very respectfully, your obedient servant,

To ETHAN A. BROWN, Esq.,
Commissioner of the General Land Office,
Washington City, D. C.

REGISTER'S OFFICE, *New Orleans.*

I, Louis St. Martin, register of the land office at New Orleans, do hereby certify the above letter to be a true copy taken from one of the records of my office; and I do further certify that the manuscript circular of 11th January, 1836, referred to in the above letter, is not amongst the files of this office, but a circular dated 1st of January, 1836, containing the same instructions, is to be found in a printed volume of laws, instructions, and opinions, at page 514.

In faith whereof I hereunto set my name, this 25th day of March, 1848.

L. ST. MARTIN, *Register.*

Exhibit No. 7, with Hughes's Answer.

RECEIVER'S OFFICE,
New Orleans, March 22d, 1848.

I, Oliver B. Hill, receiver of public moneys at New Orleans, do hereby certify that on the twenty-sixth day of February, 1822, John Goodbee, of the parish of Iberville, paid into this office the sum of two hundred dollars for one hundred and sixty acres of land situate on the Mississippi river, being "on settlement rights," as per receiver's receipt No. 8.

And that on the twenty-seventh day of February, 1822, James Goodbee, of the parish of Iberville, paid into this office four hundred dollars, being for three hundred and twenty acres of land situate on the Bayou Goula, as per receiver's receipt Nos. 6 and 7, the same being on settlement rights.

In testimony whereof I hereunto subscribe my hand, the day and year above written.

O. B. HILL.

Order at May Rules, 1854, Dismissing Bill.

Chancery Order Docket.

THE UNITED STATES
vs.
DAVID M. HUGHES et als. } No. 1,666.

The complainant having failed to take exception or file a replication in this case to the answer of the defendant filed herein on the 23d March, 1854, within the time prescribed by the rules, it is ordered, on motion of John Henderson, solicitor for said defendant, that the bill of complaint be dismissed.

Order Reinstating Bill, &c.

Minutes.—April Term, 1854.

New Orleans, Wednesday, 3d May, 1855.

Court met pursuant to adjournment. Present, Hon. Theo. H. McCaleb, district judge; absent, Hon. J. A. Campbell, presiding judge.

THE UNITED STATES
vs.
DAVID M. HUGHES.

By consent of E. W. Moise, U. S. district attorney, and of Jno. Henderson, attorney for the defendant, in open court, it is ordered that the order entered in this case, at rules, on Monday last, dismissing the complainant's bill for want of replication, be annulled and set aside, and that the answer of the defendant, David M. Hughes, be considered as now replied to, and that publication be opened for sixty days.

Order for Injunction.

Minutes.—November Term, 1855.

New Orleans, Monday, 22d January, 1854.

Court met pursuant to adjournment. Present, Hon. T. H. McCaleb, district judge; absent, J. A. Campbell, presiding judge.

THE UNITED STATES
vs.
DAVID M. HUGHES.

On motion of E. Warren Moise, esq., U. S. attorney, and on exhibiting to the court the mandate of the Supreme Court of the United States, dismissing the demurrer herein filed by the defendant, D. M. Hughes, to the complainant's bill, praying for an injunction against the said defendant, it is ordered that the same be forthwith issued as prayed for.

Injunction and Marshal's Return.

Circuit Court of the United States, fifth circuit and eastern district of Louisiana.

THE UNITED STATES
vs.
DAVID M. HUGHES et als. } No. 1,666.

The President of the United States to David M. Hughes, his agents, attorneys, and solicitors, and to each of them, greeting:

Whereas it has been represented to us in our said court, in chancery sitting, on the part of the United States, complainants, by their bill of complaint lately exhibited against you, to be relieved touching certain matters and things in said bill contained: Now, therefore, in consideration of the premises and of the allegations in said bill contained, you, David M. Hughes, your agents, attorneys, and solicitors, and each of you, are hereby commanded and strictly enjoined, under the penalty of the law, that you absolutely refrain and desist from all proceedings at law in any of the courts of Louisiana or elsewhere, upon the patent mentioned and fully described in the said complainant's bill, which said patent was issued to the said David M. Hughes by the Commissioner of the General Land Office, Washington city, on the 16th day of April, 1841, to obtain possession of the tract of land for which the same was issued; and further, that each and every of you do refrain from selling, disposing, or parting with said patent until the further order of our said court.

Witness the Hon. R. B. Taney, Chief Justice of the Supreme
[L. S.] Court of the United States, this 22d January, 1855.
(Signed) J. W. GURLEY, *Cl'k.*

(*Endorsed:*)

Marshal's return.—Received January 22d, 1855, and on the same day I served the within on David M. Hughes et als. by delivering it personally to John Henderson, jr., attorney for the said D. M. Hughes et als., at the city of New Orleans, and returned 22d Jan'y, 1855.

J. M. KENNEDY, *U. S. Marshal.*
By EMILE MARY, *D'y Marshal.*

Supplemental Bill and Bill of Revivor.—Filed 23d Feb'y, 1855.

To the Honorable the Judges of the Circuit Court of the United States in and for the fifth circuit, eastern district of Louisiana:

In Chancery.

The supplemental bill of complaint and bill of revivor of the United States of America, by E. Warren Moise, attorney of United States in and for said district, in the suit of said United States vs. David M. Hughes et als.

Your orator humbly shows to your honors, that since the filing of the bill of complaint in this cause, Robert Sewell, one of the defendants, has departed this life, leaving a widow and minor heirs; that one of the defendants, Franklin A. Hudson, who as a minor was represented by Holmes Hutchinson, his tutor, had arrived at majority.

Wherefore, may it please your honor to grant unto your orator the most gracious writ of subpœna of the United States ad vevivendum, to be directed to the said widow, Mary Evelina Hebert, and natural tutrix of the minors, Robert, Henry, Nicholas Hebert, Leonora and Laura, Evelina Sewell, children of the said Robert Sewell by marriage with said Mary Evelina Hebert, and to the said Franklin A. Hudson, commanding them to show cause respectively at a certain day, under certain pain therein to be limited personally to be and appear before your honors in this honorable court, then and there to show cause, if cause there be, why the suit in this cause should not be revived, and in the same plight, state, and condition as the same were at the time of the abatement thereof; and that the said Franklin A. Hudson then and there answer, all and singular, the allegations of the original bill of complaint, and stand to and abide and perform such order, direction, and decree therein as to your honors shall seem meet, and your orator shall ever pray.

(Signed) E. WARREN MOISE,
U. S. Attorney.

Service accepted of subpœna, and it is agreed that appearance shall be entered at next rule day.

New Orleans, 23d Feb'y, 1855.

(Signed) CLARKE & BAYNE,
Sol'rs for Mrs. Sewell and F. A. Hudson.

Plea and Answer of F. Hudson to Supplemental Bill.—Filed 24th Feb'y, 1855, with Exhibits A No. 1, A No. 2, A No. 3, A No. 4, A No. 5, A No. 6, A No. 7, A No. 8, A No. 9 and A No. 10.

UNITED STATES
vs.
DAVID M. HUGHES and als.

Circuit Court of the United States in and for the fifth circuit, eastern district of Louisiana, in chancery sitting.

The plea and answer of Franklin H. Hudson, one of the defendants, to the bill and supplemental bill of complaint of the United States, complainant.

The said defendant doth plead thereunto as follows, and for cause of plea says, that heretofore, to wit, at the December term of the Supreme Court of the United States, the said honorable court there sitting for said term one thousand eighteen and fifty,

and on the hearing of the appeal of the complainants in this cause from the judgment of this honorable court, dismissing said bill of complaint upon the demurrer filed by David M. Hughes, in this cause, did decree "that the decree of the said circuit court (this honorable court) in this cause be, and the same is hereby reversed, and this court proceeding to render such decree as the said circuit court ought to have rendered, doth order, adjudge and decree, that the patent made to David Michael Hughes, by the President of the United States, on the 16th day of April, A. D. 1841, for section 54, in township 10, of range 12 east, in the district of lands subject to sale at New Orleans, Louisiana, containing $175\frac{46}{100}$ acres of land, be and the same is hereby vacated and annulled; that the said David M. Hughes do within one calendar month from the filing the mandate of this court in the said circuit court, surrender said patent to the clerk of said court; that the said clerk shall certify under the seal of the said court, on the face of said patent, that it is annulled by this decree, and then transmit the same to the Commissioner of the General Land Office, at Washington city; that the said David M. Hughes be, and he is hereby forever enjoined from prosecuting any suit in law or equity on said patent, as evidence of title; and it is further adjudged and decreed, that this cause be and the same is hereby remanded to the said circuit court, with directions to carry this decree into effect, and for such further proceedings to be had therein, in conformity to the opinion of this court, as to law and justice may appertain;" that the mandate of said Supreme Court having been duly filed in this honorable court, proceedings were had at the term of 185 , to enforce said decree, and the same was duly executed, the said patent to said Hughes being annulled, cancelled and delivered up to the clerk of this court, and by him forwarded to the Commissioner of the General Land Office, at Washington city; and this defendant further saith, that after said decree and the proceedings thereon, and in confidence thereby that the claim of said David M. Hughes had been annulled and cancelled, and that the title of the possessors under the entry of John Goodbee, in the complainants' bill of complaint mentioned, had been effected, did purchase the undivided half part of said tract of land situate on the north side of Bayou Goula, being number one, section 54, township 10, range 12 east, of and from the succession of Robert Sewell, as will appear by the authentic copy of the act of sale or proces-verbal hereto annexed, and marked Exhibit A 1, made on the 21st day of April, one thousand eight hundred and fifty-three; that this defendant is now the owner and possessor of all of said tract of land. Wherefore he pleads the said decree and execution, as a bar to the claims of said David M. Hughes, under and by virtue of the patent delivered to him, and he prays the judgment of the court that all the matters and things in said complainants' bill have been finally

adjudged, and that the rights of this defendant have been established and confirmed; and this defendant further pleads that the re-instating of this cause upon the docket of the Supreme Court of the United States, by the consent of the Attorney General of the United States, was a nullity; that said public officer has no such authority at law, as to authorize him to consent to the annulling or cancelling of a judgment in favor of the United States. Wherefore this defendant prays the judgment of the court, that said order and the decree thereafter are nullities.

And the said defendant humbly prays the judgment of the court whether it behooves him to make any other or further answer than as aforesaid.

And the said defendant not waiving his said plea, but in support thereof, this defendant, for answer to the said complainant's bill, to so much or such parts thereof as this defendant is advised is material for him to answer unto, says that all the matters and things contained in said bill have been adjudged upon in this cause by the Supreme Court of the United States at the December term, A. D, 1850, and the patent issued to said David Michard Hughes has been annulled and cancelled by said decree, and by the process of this honorable court, as has been hereinbefore set forth.

And this defendant further answering says, that he adopts the statements and allegations contained in the answer of Holmes Hutchison, late his tutor, contained in his answer heretofore filed in this cause, as if the same were embodied in this his answer, and fully set forth.

And this defendant further answering saith, that said tract of land, being lot number one, section 54, of *transcrip* 10, range 12 east, on north side of Bayou Goula, was, as he is informed and believes, surveyed some time prior to 1814 by a surveyor of the United States; that the said lot was prior to said 1814 occupied and cultivated by John Biddle, or Budle, until *sum* time in 1820 or 1821, when the said Biddle sold and transferred his settlement rights to John Goodbee; that said John Goodbee applied to the register and receiver of the public land office of the eastern district of Louisiana to be recognised as entitled to said lot or tract of land, and on the 22d day of February, 1852, received a certificate from Samuel H. Harper, register, recognising his rights; and, as this defendant is informed and believes, on the 26th of February, of the same year, said Goodbee paid to the receiver of the land office the sum of two hundred dollars, being the purchase money of said land, and thereby became by entry the lawful owner of said land.

And this respondent further answering saith, that in the tract-book, in the land office, New Orleans, as respondent is informed and believes, under the head of "Register of lands belonging to the United States in the order of the President's proclamation of the

11th August, 1823," the lots on the north side of Bayou Goula, in Bayou Goula county, were registered by continuous numbers from 1 to 14, and then on the south side by continuous numbers from one to 14, showing that the lots along said Bayou Goula had their fronts on said bayou, and did extend across the same, but the lots on the one side were separate from them on the other side; that, as respondent is informed and believes, that said Samuel H. Harper, then register, some time during the year 1823, prepared the said book, and for his convenience registered therein all the lots on both sides of said Bayou Goula in the order of their numbers, as well those which had been sold or reserved for public schools as those which then remained the property of the United States; but at the same time he marked opposite said numbers of the lots the words "sold" or "reserved for schools," as the case might be, thereby showing that said lots were not offered for sale under the President's proclamation; that upon said book, opposite lot No. 1, on the north side of Bayou Goula, as this defendant is informed and believes, and under the head to whom sold, was written by said Samuel H. Harper at that time the word (sold;*) that an *asterich* of reference was affixed to said word, referring, as this defendant is informed and believes, to a note at the foot of the registry of the lots on that side of said bayou, having a prefix of an *asterich*, which note is in the words, "settlement rights," and referred to the book of registry of settlement rights, and means, as this respondent is informed and believes, that said lot number one, on the north side of said Bayou Goula, was not offered for sale, but was reserved therefrom because the United States had sold the same under the provisions of law to the said John Goodbee on the 26th of February, 1822; that this defendant refers to an extract from said book, and herewith filed as Exhibit A 2, and to a copy of register of settlement rights, herewith filed and marked Exhibit (A 3.)

And this respondent further says that said lot, as he is informed and believes, was not offered for sale by the register under the President's proclamation of 11th August, 1853; that in the book of auction sales under said proclamation all the lots remaining unsold were registered in the order of their number; and such as were sold, the name of the purchaser, and the price, was placed after said number; and those which were not sold, though offered for sale, were marked opposite their number "no bid;" that said lot number one, on the north side of said bayou, was not registered on said book; that respondent refers to an extract from said book, a copy of which is herewith filed as Exhibit (A 4.)

And this respondent further saith, that Silas F. Hudson and William M. Lambeth, as respondent is informed and believes, being possessed and claiming as owners the said lot number one, on the north side of Bayou Goula, by virtue of a chain of title from

John Goodbee, which has been fully stated and referred to in the answer of this respondent's tutor, Holmes Hutchison, on file in this cause, applied on the 14th day of June, 1836, to the register of the land office for the southeastern district of Louisiana, at New Orleans, to enter a certain tract of land designated as lot number one, of section No. forty-seven, in township ten, of range No. 12 east, containing 332 $\frac{78}{100}$ acres, which said tract of land they stated to be situate in the rear and adjacent to their front tract, situate in the parish of Iberville, designated as lots Nos. one and two, of sections Nos. 54 and 55, township No. 10, of range Nos. 12 east, containing 341 $\frac{80}{100}$ acres; that said application was based upon the provisions of the act of Congress of 15th June, 1832, and entitled "An act to authorize the inhabitants of the State of Louisiana to enter the back lands;" that said receiver recognised their right to make said entry in virtue of the provisions of said act on the said 14th day of June, 1836; and on the said day said Hudson and Lambeth paid to the receiver of public moneys of said land district the sum of $415 $\frac{98}{100}$, and thereby became by entry the owners of said back land. This defendant refers to Exhibits A 5 and A 6, herewith filed.

And this defendant further saith, that he cannot account how, with all these facts patent on the books of the land office, that the register should have permitted said David Michael Hughes to make entry of said lot No. 1 on the north side of said Bayou Goula, or that, with the notorious occupancy and cultivation of said tract of land from the year 1814, the said Hughes could have been otherwise than well informed that said lot was not the property of the United States at the time of his said entry.

And this respondent further answering saith, that on the 15th day of March, 1849, the President of the United States, upon the advice of the Attorney General of the United States, being well satisfied that there had been grievous error in the land offices in permitting said David M. Hughes to make entry of said tract of land, and in issuing to him a patent therefor, did cause to be issued a patent to said John Goodbee upon his original entry of 26th February, 1822. This defendant refers to Exhibit A 7, A 8, and A 9, filed herewith, and also to the field-notes of survey marked Exhibit A 10, all which matters and things this respondent is ready to prove and maintain. Wherefore this respondent humbly prays that his title and possession in and to said lot No. one, section 54, on the north side of Bayou Goula, township 10, range 12 east, may by decree of this honorable court be granted, and the said David Michael Hughes forever restrained from setting up title to said lot of ground or obtaining possession thereof by any proceedings at law or in equity; and this respondent answers the interrogatories in said complainants' bill as follows:

To the ninth interrogatory he saith, that he is informed and believes that said John Goodbee is now alive.

To the tenth interrogatory he saith, that said land is now in respondent's possession; his title is derived by a chain of title, as disclosed in his answer foregoing and in the answer of his tutor, Holmes Hutchinson, heretofore filed, and the same is derived from John Goodbee.

(Signed) CLARK & BAYNE, *Sol'rs.*

Franklin H. Hudson being duly sworn, deposeth and saith, that the facts averred by him in the foregoing answer, on his own knowledge are true as there stated; upon the information of others, he believes to be true.

(Signed) FRANKLIN A. HUDSON.

Sworn to and subscribed before me, this 24th February, 1855.

(Signed) J. W. GURLEY,
U. S. Com'r.

Defendant's Exhibit A 1.—Filed with Plea and Answer of F. Hudson to Supl'l Bill, 24th Feb'y, 1855.

UNITED STATES OF AMERICA,
State of Louisiana, Parish of Iberville.

Be it known, that on this twenty-first day of April, A. D. eighteen hundred and fifty-three, pursuant to an order of the sixth district court of the State of Louisiana, in and for the parish of Iberville, bearing date the seventeenth day of March, A. D. eighteen hundred and fifty-three, ordering and decreeing the sale of the property belonging to the succession of Robert Sewall, deceased, to be made according to law, by Gustave S. Rosseau, auctioneer in and for the parish of Iberville, a duly certified copy of which order or decree remains hereto annexed for reference, I, Gustave S. Rousseau, auctioneer in and for the parish of Iberville, duly licensed and sworn, and therein residing, after having duly advertised the said sale as the law directs, by posting up notices thereof in the English and French languages at the door of court-house of said parish, for more than thirty days next previous to the day of sale, and by publishing similar notices in the Iberville Gazette, a newspaper published weekly in said parish, each time the said paper has been issued since the date and posting up of said notices, did repair to the house and late residence of the said Robert Sewall, deceased, that being the place designated in said notices for making said sale, and then and there, being in the presence of an assemblage of persons, I, the said auctioneer, did make known and explained in a distinct and audible voice, in the English and French languages, the terms and conditions of said sale as follows, to wit:

Terms of sale: The price of adjudication payable as follows: one-

fifth cash on the day of sale, one-fifth payable in March, eighteen hundred and fifty-four, one-fifth payable in March, eighteen hundred and fifty-five, one-fifth payable in March, eighteen hundred and fifty-six, and one-fifth payable in March, eighteen hundred and fifty-seven, purchaser giving notes with personal security, or mortgage on other property, to the satisfaction of the tutrix. The property sold to remain specially mortgaged to secure the payment of the price of adjudication, and the notes to bear interest at eight per cent. per annum from time due until paid.

Before opening said sale, I, the said auctioneer, did read publicly in an audible voice, a certificate from the recorder of mortgages of the parish of Iberville, by which it appears that the property here to be offered for sale is free from all mortgages whatsoever.

Then, I, the said auctioneer, did set up and offer for sale to the highest and last bidder, in block or in globe, the one undivided half part of the whole of the following described property, the other undivided half part belonging to Franklyn R. Hudson, to wit:

1st. A certain plantation situated on the north side of Bayou Goula, measuring ten arpents front, by the depth thereunto belonging, and containing eight hundred arpents, more or less, superfices, bounded in front or south by the Bayou Goula; east by land of Paul Hebert & Co., and Dupuy & Louves; west by land of Joseph D. Hamilton; north by land of John P. R. Stone and John B. Craighead; the said plantation being established as a sugar plantation; together with all the buildings and improvements, the same being dwelling-house, sugar-house, mills, engine, negro quarters, &c., and all other appurtenances thereon being and thereunto belonging.

2d. A certain tract of land described as follows: being the east half of section No. forty-five and forty-eight, township ten, range twelve east, west of the Mississippi river, containing five hundred and sixty-five acres, more or less, in superfices.

3d. The following described slaves, to wit: Peter, negro man, aged fifty-two years; Jack, negro man, aged seventy-two years; Cyrus, negro man, aged fifty years; Ruben, negro man, aged fifty years; Henry, negro man, aged forty years; Whiteman, negro man, aged forty years; Robert, negro man, aged forty-two years; Charles, negro man, aged forty-two years; Hutchinson, negro man, aged forty-four years; Lewis, negro man, aged thirty-seven years; Nathaniel, negro man, aged thirty-four years; Fresbie, negro man, aged thirty-two years; George, negro man, aged thirty-one years; Bretton, negro man, aged thirty-three years; John, negro man, aged twenty-nine years; Wesley, negro man, aged thirteen years; Nelly, negro woman, aged fifty-four years; Ellen, negro woman, almost blind, aged fifty years; Solomon, negro boy, blind in one eye, aged eleven years; Maria, negro woman, aged fifty years; Mary Ann, negro woman, aged thirty-six years, and her two chil-

dren; Kitty, a girl, aged seven years, and Sylvie, girl, aged five years; Eliza, negro girl, aged eleven years; Debby, negro woman, aged fifty-four years; Flora, negro woman, aged thirty-one years, and her three children—Rhody, a girl, aged seven years; Louisa, a girl, aged five years, and Henry, a boy, aged one year; Sally Ann, negro woman, aged forty years, and her child Albert, a boy, aged eight years; Henrietta, negro woman, aged thirty-two years; Ally, negro woman, (sickly,) aged thirty-seven years, and her three children—Lucinda, a girl, aged seven years; Cyrus, a boy, aged four years, and Isaac, a boy, aged three years; Charlotte, negro girl, aged eighteen years; Emily, negro woman, blind in one eye, aged thirty-two years; Ann, mulatto woman, aged thirty years; Fanny, negro woman, aged fifty-five years; Little Fanny, negro woman, aged twenty years, and her two children—Warren, a boy, aged three years, and Suzan, a girl, aged one year; Caroline, negro woman, aged eighteen years, with her infant child; Elizabeth, negro girl, aged thirteen years; Bob, negro man, aged thirty-two years; Tom, negro man, aged twenty-seven years; Sam, negro man, aged fifty-two years; William, negro boy, aged eighteen years; Johny, negro boy, aged sixteen years; Titson, negro boy, aged fifteen years; Louisa, negro woman, aged forty-two years, (sickly;) Eliza, negro woman, aged twenty-seven years; Louisa, Creole negro woman, aged twenty-seven years, and her child Daniel, a boy, aged three years; Vincy, negro woman, aged thirty-seven years, and her two children—Elly, a girl, aged three yeaas, and Diana, a girl, aged six months; Kitty, negro woman, a dirt eater, aged thirty-seven years; Magdelaine, negro woman, aged thirty-seven years, and her two children—Cornelius, a boy, aged five years, and Auguste, a boy aged three years; Charlotte, negro woman, aged forty-seven years, and her child Antoinette, a girl, aged seven years; Sophia, negro woman, aged thirty-three years, and her two children—Jacob, a boy, aged three years, and Serina, an infant girl; Eliza B., negro woman, aged twenty-two years, and her child Jane, a girl, an infant; Appy, negro woman, aged twenty-three years, and her child Henriette, a girl, an infant; Frank, negro boy, aged sixteen years.

4th. The following described movable property, to wit: one pair of timber wheels; one lot of ploughs and harrows; one lot of double trees; one lot of blacksmith tools and irons; one lot of hoes, axes, spades and shovels; two mule wagons; one dray and one pair of ox wheels; five cane carts; two bagasse carts; one-horse wagon; one lot of lumber; one lot of staves and hoop-poles; four pair of oxen; twenty-two heads of stock cattle; one lot of fine bricks; one set of cooper tools; one lot of shingles; one lot of boards; one lot of pickets; one lot of ox yoke and chains; one lot of corn; twenty-four mules; one sorrel horse; two mares and colts; twelve heads of sheep; forty barrels of lime; one lot of carpenters' tools;

one four pump and pipes; one lot of staves; one lot of barrels; one lot of lamps; two oil cans and *ali;* three coils of rope; two boxes of tobacco; one lot of leather barrel bands; one hundred and fifty cords of wood; thirty-four barrels of mess pork; one lot of bulk pork; one lot of *sault;* fourteen kegs of nails; one dozen new hoes; one dozen pair tress chains; one dozen new bridles; six new harness; two sets of wagon harness; four sets of cart harness; six French stocks; two boxes of glass; one lot of wrought nails; one barrel of whiskey; one side of leather; one lot of medicines; one lot of clothing; one lot of shoes and boots.

The whole of the above described property was finally adjudicated and sold to Mr. Franklyn H. Hudson, the highest and best bidder therefor, at the price and sum of forty-three thousand two hundred and fifty dollars, upon which sum, by an agreement made between the parties, the said purchaser, Franklyn A. Hudson, paid in cash the sum of eleven thousand two hundred and fifty dollars, and for the balance remaining, say thirty-two thousand dollars, the said purchaser has this day executed and signed his four promissory notes, under date of this day, each for the sum of eight thousand dollars, bearing interest from time due until paid, at eight per centum per annum, and made payable to the order of said Mrs. Marie Eveline Hebert, widow of Robert Sewall, and payable, respectively, in March, eighteen hundred and fifty-four, five, six and seven.

And in order to secure the full and punctual payment of the above four notes, and the interest that may accrue thereon, the said purchaser, Franklyn A. Hudson, hereby mortgages and hypothecates the undivided half of the property herein adjudicated and sold to him; and further, he does also hypothecate and mortgage the other undived half of said property, land and slaves owned in his own name. Therefore the said purchaser has actually hypothecated and mortgaged all the property, land and slaves herein described, to secure the payment of said four notes, and all interest that may accrue.

Thus done and signed at the parish of Iberville, the day, month and year in the beginning first written, in the presence of Messrs. Joseph D. Hamilton and Andrew J. Simons, competent witnesses, who have signed these presents with the said Franklyn A. Hudson, the said Mary Eveline Hebert, widow of Robert Sewall, deceased, and me, the said auctioneer, after due reading thereof.

(Original signed) F. A. HUDSON,
M. E. SEWALL.

JOSEPH D. HAMILTON,
A. J. SIMMONS.

G. S. ROUSSEAU,
Auctioneer.

STATE OF LOUISIANA,
Parish of Iberville.

I, Louis Petit, recorder, in and for the parish of Iberville, do hereby certify that the foregoing and within process verbal of adjudication in my office, in record of mortgages, book No. 4, entry No. 131.

[SEAL.] In testimony whereof, I have hereunto set my hand and seal of office, this 23d day of April, A. D. 1853.
(Signed) L. PETIT, *Recorder.*

Filed April 25th, 1853.
(Signed) M. A. ESTEVAN, *Clerk.*

A true copy of the original on file and of record in my office.
[SEAL.] In testimony whereof, I have hereunto set my hand and seal of said court, this 29th day of December, A. D. 1854.
M. A. ESTEVAN, *Clerk.*

Complainant's Evidence, A No. 2.—Filed with Plea and Answer of F. Hudson to Sup'l Bill, 24th Feb'y, 1855.

Extract from Register of lots belonging to the United States, in the order of the President's proclamation of the 11th August, 1823.

Bayou Goula, County of .

No. of lots.	P'ts position.	Quantity. Acres.	Quantity. 100 Depth.	To whom sold.	Residence.	When sold.
1	North side	.....	.....	(Sold: *) Hudson.		
2	"	144	.....	John Wilson.....	Iberville	6th Feb'y, 1824.
3	"	"	.....	(Sold: *) Flaimilton..	"	"
4	"	"	.....	(Sold: *) Md. Ross...	"	"
5	"	"	.....	R. Loyd.....	Iberville.....	15th Nov., 1825.
6	"	158	02	John Garlick, 12 S...	New Orleans	12th Nov., 1825.
7	"	166	83	Same, 12 S.....	"	"
8	"	188	73	Same, 12 S.....	"	"
9	"	152	57	Bickel & Hamblot, 12 S	New Orleans	14th Nov., 1825.
10	"	206	50	Same.....	"	10th Feb'y, 1826.
11	"	198	62	Same.....	"	"
12	"	191	97	Same.....	"	"
13	"	.....	.....	Reserved for schools.		
14	"	.....	.....	Doyld.		
1	south side	108	75	Achille Segur.....	Iberville	6th February, 1824.
2	"	"	"	"	"	"
3	"	"	"	(Sold: *).....	"	"
4	"	"	.....	(Sold: *)	"	"
5	"	"	.....	(Sold: *)	"	"
6	"	179	51	Reuben Rush, P. S...	Iberville	20th Nov., 1824.
7	"	168	"	Paul Herbert, P. S...	Iberville	5th July, 1824.
8	"	148	75	John Wilson.....	Iberville	6th Feb'y, 1824.

Extract—Continued.

No. of lots.	Pt's position.	Quantity. Acres.	Quantity. 100 Depth.	To whom sold.	Residence.	When sold.
9	south side	149	50	Gibson Peirce.....	Iberville	6th Feb'y, 1824.
10	"	"	"	....	"	"
11	"	"	"	....	"	"
12	"	130	"	John Wilson.....	Iberville	10th February, 1824.
13	"	"	"	"	"	"
14	"	"	"	"	"	"

*Settlement rights.

LAND OFFICE, NEW ORLEANS,
Feb'y 21st, 1855.

I certify the foregoing to be a true extract from the record of this office.

(Signed) LOUIS PALMS,
Register.

Complainant's Evidence, Exhibit A 3.—Filed with Plea and Answer of F. Hudson to Supp'l Bill, 24th Feb'y, 1855.

Register of Settlement-rights sold in virtue of the 5th section of an act of Congress, dated 12th Ap'l, 1814, entitled An act for the final adjustment of land titles in the State of Louisiana and Territory of Alabama.

Settlement-Rights.

1822.							
Feb'y 4	1	Maria Louisa.....	Point Coupe...	Mississippi.....	160	$1 25	$200 00
9	2	John B. Crochets...	Assomption ...	Grand Bronille	160	"	200 00
	3	Charles Temple.....	"	"	160	"	200 00
	5	Hugh Brackin.....	Iberville.....	New River.....	160	"	200 00
26	8	John Goodbee.....	"	Mississippi.....	160	"	200 00
27	6	James Goodbee.....	Lot 2 or sec. 82, T. 10, R. 12 E.....	Bayou Goula...	160	"	200 00
	7	The same.....	"	"	160	"	200 00
M'ch 9	13	John Rollins.....	West B. Rouge	Mississippi.....	160	"	200 00
	11	Same, rep. of T. C. Rollins.....	"	"	160	"	200 00
15	12	John Rollins.....	"	"	160	"	200 00

Returns made to Gen'l Land Office, of 1st quarter of 1822, acres..1,600.....$2,000 00

LAND OFFICE,
New Orleans, Feb'y 21st, 1855.

I certify the foregoing to be a true copy, taken from the records of this office.

(Signed) LOUIS PALMS,
Register.

Exhibit A No. 4.—Filed with Plea and Answer of F. Hudson to Supplemental Bill, 24th February, A. D. 1855.

Extract from the Book of Auction Sales, under proclamation dated 11th August, 1823.

LAND OFFICE, NEW ORLEANS,
6th February, 1824.

On this day sold at public auction the following lands to the following named persons, viz:

Lot No. one, on the east side of Bayou Alabama, and west of Fortaise bayou, in the county of , parish of , containing acres, to , of , at the rate of $ per acre, amounting to $. No bid.

Lot No. 2, on the north side of Bayou Goula, in the county of , parish of , containing 144 acres, to John Wilson, of Donaldsonville, at the rate $1 25 per acre, amounting to $.

Lot No. 5, on the north side of Bayou Goula, in the county of , parish of , containing 151.75 acres, to , of , at the rate of $ per acre, amounting to $. No bid.

Lot No. 6, on the north side of Bayou Goula, in the county of , parish of , containing acres, to , of , at the rate of $ per acre, amounting to $. No bid.

No. 7, on the north side of Bayou Goula, in the county of , paris of , containing acres, to , of , at the rate of $ per acre, amounting to $. No bid.

No. 8, on the north side of Bayou Goula, in the county of , parish of , containing acres, to , of , at the rate of $ per acre, amounting $. No bid.

No. 9, on the north side of Bayou Goula, in the county of , parish of , containing acres, to , of , at the rate of $ per acre, amounting to $. No bid.

No. 10, on the north side of Bayou Goula, in the county of , parish of , containing acres, to , of , at the rate of $ per acre, amounting to $. No bid.

No. 11, on the north side of Bayou Goula, in the county of , parish of , containing acres, to , of , at the rate of $ per acre, amounting to $. No bid.

No. 12, on the north side of Bayou Goula, in the county of , parish of , containing acres, to , of , at the rate of $ per acre, amounting to $. No bid.

No. 14, on the north side of Bayou Goula, in the county of , parish of , containing acres, to , of , at the rate of $ per acre, amounting to $. No bid.

No. 1, on the south side of Bayou Goula, in the county of , parish of , containing 108.75 acres, to Achille Seguer, of Iberville , at the rate of $1 25 per acre, amounting to $.

No. 2, on the south side of Bayou Goula, in the county of , parish of , containing 89 acres, to Achile Seguer, of Iberville , at the rate of $2 30 per acre, amounting to $. This purchase annulled, the land having been previously sold as a settlement-right to Goodbye.

Lot No. 6, on the south side of Bayou Goula, in the county of , parish of , containing 179.50 acres, to , at the rate of $ per acre, amounting to $. No bid.

Lot No. 7, on the south side of Bayou Goula, in the county of , parish of , containing 167 acres, to , of , at the rate of $ per acre, amounting to $.

Lot No. 8, on the south side of Bayou Goula, in the county of , parish of , containing 148.75 acres, to J. Wilson, of Donaldsonville, at the rate of $1 25 per acre, amounting to $.

Lot No. 9, on the south side of Bayou Goula, in the county of , parish of , containing 149.50 acres, to Gideon Pierce, of Iberville, at the rate of $1 28 per acre, amounting to $.

Lot No. 10, on the south side of Bayou Goula, in the county of , parish of , containing 130 acres, to J. Wilson, of Donaldsonville, at the rate of $1 26 per acre, amounting to $.

Lot No. 11, on the south side of Bayou Goula, in the county of , parish of , containing acres, to , of , at the rate of $ per acre, amounting to $. No bid.

Lot No. 12, on the south side of Bayou Goula, in the county of , parish of , containing acres, to , of , at the rate per acre, amounting to $. No bid.

Lot No. 13, on the south side of Bayou Goula, in the county of , parish of , containing acres, to , of , at the rate of $ per acre, amounting to $. No bid.

Lot No. 14, on the south side of Bayou Goula, in the county of , parish of , containing acres, to , of , at the rate of $ per acre, amounting to $.

LAND OFFICE, NEW ORLEANS, *9th Feb.*, 1824.

On this day sold at public auction the following lands to the following named persons, viz:

Lot No. 26, on the west side of Bayou Grostete, in the county of , parish of West Baton Rouge, containing 159 acres, to J. Wilson and Henry M. Sykes, of New Orleans, at the rate of $1 25 per acre, amounting to $.

Lot No. 27, on the west side of Bayou Grostete, in the county of

, parish of , containing 163.50 acres, to J. Wilson and H. M. Sykes, of New Orleans, at the rate of $1 25 per acre, amounting to $.

Lot No. 28, on the west side of Bayou Grostete, in the county of , parish of , containing 168.75 acres, to J. Wilson and Henry Sykes, of New Orleans, at the rate of $1 25 per acre, amounting to $.

Lot No. 29, same place, no bid. From that to 80, no bids.

Lot No. 81, on the west side of Bayou Grostete, in the county of , parish of , containing 400 acres, to J. Wilson and Henry M. Sykes, of New Orleans, at the rate of $1 25 per acre, amounting to $.

LAND OFFICE, NEW ORLEANS, 10*th Febr'y*, 1824.

On this day sold at public auction the following lands to the following named persons, viz:

Lot No. 9, on the north side of Bayou Goula, in the county of , parish of , containing 152.50 acres, to Sam'l Slater, of New Orleans, at the rate of $1 25 per acre, amounting to $.

Lot No. 8, on the north side of Bayou Goula, in the county of , parish of , containing 188.75 acres, to Samuel Slater, of New Orleans, at the rate of $1 25 per acre, amounting to $.

Lot No. 78, on the west side of Bayou Grostete, in the county of , parish of , containing 127 acres, to E. Rogers, of , at the rate of $1 25 per acre, amounting to $.

Lot No. 79, on the west side of Bayou Grostete, in the county of , parish of , containing 125 acres, to E. Rogers, of New Orleans, at the rate of $1 25 per acre.

Lot No. 80, on the west side of Bayou Grostete, in the county of , parish of , containing 123 acres, to E. Rogers, of New Orleans, at the rate of $1 25 per acre, amounting to $153 75.

There being no bidders, or further competition, the sales of the public lands were stopped, subject to be offered again at a future day.

New Orleans, Feb'y 10th, 1824.

SAM'L H. HARPER, *Register.*
J. J. McLANAHAN, *Receiver.*

LAND OFFICE, NEW ORLEANS, *Feb'y 21st*, 1855.

I, Louis Palms, register of the land office at New Orleans, do hereby certify the foregoing to be a true extract from the records of this office.

Witness my hand, at the time and place above written.

LOUIS PALMS, *Register.*

Exhibit A No. 5.—Filed with Plea and Answer of F. Hudson to Supplemental Bill, 24th Feb'y, 1855.

To the Register of the General Land Office for the southeastern district of Louisiana, at New Orleans:

SIR: In virtue of an act of Congress approved on the 15th June, 1832, and entitled "An act to authorize the inhabitants of the State of Louisiana to enter the back lands," Silas F. Hudson and William M. Lambeth do hereby apply to enter a certain tract of land designated as lot No. one, of section No. forty-seven, in township No. ten, of range No. twelve east, containing three hundred and thirty-two $\frac{78}{100}$ acres; which said tract of land is situate in the rear and adjacent to their front tract, situate in the parish of Iberville, designated as and being lots Nos. one and two, of sections numbers fifty-four and fifty-five, in township No. ten, of range No. twelve east, containing three hundred acres and forty-one $\frac{80}{100}$ acres, which was sold by the United States; which said rear tract contains three hundred and thirty-two $\frac{78}{100}$ acres as aforesaid, according to the returns of the surveyor general on file in your office, being .

New Orleans, 14th June, 1836.

(Signed) W. M. LAMBETH,
" *SIBUS* F. HUDSON.

Certificate No. 976.

I do hereby certify that the above applicants are entitled to the quantity of land set forth in their application, and more particularly described therein, in virtue of the provisions of the act of Congress referred to.

(Signed) B. S. CANONGE,
$415 98. *Register.*

LAND OFFICE, NEW ORLEANS, *Feb'y 21st*, 1855.

I, Louis Palms, register, do hereby certify the foregoing to be a true copy of the original on file in this office.

LOUIS PALMS, *Register.*

Exhibit A No. 6.—Filed with Plea and Answer of F. Hudson to Sup'l Bill, Feb'y 24th, 1855.

LAND OFFICE AT NEW ORLEANS, 23*d February*, 1855.

I, H. W. Palfrey, receiver of public moneys at New Orleans, do hereby certify that, by the records of this office, Messrs. W. M. Lambeth and S. F. Hudson paid on 14th June, 1836, to receiver of public moneys at that time, the sum of four hundred and fifteen $\frac{98}{100}$ dollars for (328 $\frac{78}{100}$) acres—say three hundred and twenty-eight $\frac{78}{100}$ acres of land, in section 47 (forty-seven), lot one, township 10, range 12, price one $\frac{25}{100}$ per acre, $415 98, as p. receiver's receipt No. 976.

New Orleans, 23d Feb'y, 1855.

(Signed) H. W. PALFREY, *Receiver.*

Exhibit A No. 7.—Filed with Plea and Answer of F. Hudson to Sup'l Bill, Feb'y 24th, 1855.

GENERAL LAND OFFICE,
February 20th, 1849.

SIR: On the 27th ult'o you enclosed to this office a letter addressed to me by Holmes Hutchinson, esq., asking the issuance of a second patent in the case of John Goodbee. When Mr. Hutchinson first made this request of the office some time since, it was refused; but under an opinion recently rendered by Attorney General Toucey, a second patent can now be issued, and the one asked for by Mr. Hutchinson will be issued and sent to him in the course of a few days.

I am, sir, with great respect, y'r ob't servant,
RICHARD M. YOUNG,
Commissioner.

Hon. TIMOTHY JENKINS,
House of Reps.

Exhibit A No. 8.—Filed with Plea and Answer of F. Hudson to Sup'l Bill, Feb'y 24th, 1855.

OFFICE OF THE ATTORNEY GENERAL,
Feb'y 29th, 1848

SIR: I have felt myself somewhat embarrassed by the apparently conflicting opinion, and heretofore given *he* this office, in making a reply to the inquiry submitted on the 26th instant, whether a patent can be issued to Alexander McDugall, while a former one for the same land, issued to Wm. B. Robertson, is still outstanding. But upon reflection, the doubts which at first existed have been removed. By the 5th section of the act of March 3d, 1811, entitled "An act providing for the final adjustment of claims to lands and for the sale of the public lands in the Territories of Orleans and Louisiana, and to repeal the act passed for the same purpose, and approved February 16th, 1811," a pre-emption right to back land was granted to the owner in front in certain cases, with a provision that "every person entitled to the benefit of this section shall, within three years after the date of this act, deliver to the register of the proper land office a notice in writing, stating the situation and extent of the tract of land he wishes to purchase, and shall also make the payment and payments for the same at the time and times which are *as* may be prescribed by law for the disposal of other public lands in said Territory, the time of his delivering the notice aforesaid being considered as the date of the purchase; and if any such person shall fail to deliver such notice within the said period of three years, or to make such payment or payments at the time above mentioned, his right of pre-emption shall cease and become void, and the land may thereafter be pur-

chased by any other person, in the same manner and on the same terms as are or may be provided by law for the sale of other public lands in the said Territory." This section was revived and continued in force for the term of two years, by an act approved on the 11th of May, 1820. Within the period of two years, that is, on the 19th of March, 1822, Alexander McDugall, having such pre-emption right, entered at the land office at New Orleans a tract of back land, including section eighty-six, in township seven south, of range twelve east, giving the requisite notice, paid for the land, and received the usual certificate of purchase of the receiver. More than twenty-two years afterwards, on the 13th of March, 1845, Wm. B. Robertson entered the same section at private sale, made the requisite payment, received a certificate of purchase, and thereupon, on the 21st of April, 1845, obtained a patent; the fact in the possession of the officers of the government not having been adverted to by them, that the land had already been appropriated. The question is, whether a patent, notwithstanding that issued to Wm. B. Robertson, can now be issued to Alexander McDugall in pursuance of the first entry.

It is an undoubted proposition, that if a patent be issued without authority of law, it is utterly void. Not being an act done in a court of record, there is no difficulty in the way of treating it as merely void. Indeed, it is impossible to regard it in any other light, without a contradiction in terms.

It is equally true, that the performance of an act which is merely void, is not an exhaustion of power legally conferred. In such a case the officer is not functus officio, because he had not exercised the power, and an act which is void cannot have the efficient operation of extinguishing a power which is valid.

By the act of 1811 above referred to, the land in question was reserved from general sale for the period of three years absolutely, that the owner of the land in front might have an opportunity to take it, and a sale or grant of it during that time, to any other person, would have been without any authority. If within that time the owner of the front lands performed the conditions prescribed by the act—that is, if he made the entry, gave the notice, and paid for the land as required—then the land was, not merely for the period limited, but forever thereafter, exempted from general sale, and could not lawfully be sold or conveyed to any other person, there being no authority to be found in any act of Congress that would justify or uphold such sale or conveyance. But if such conditions were not complied with—if the notice was not delivered within the period of three years, or the payment not made, then it is provided that "his right of pre-emption shall cease and become void, and the land may thereafter be purchased by any other person, in the same manner and on the same terms as are or may be pre-

scribed by law for the sale of other public lands in the said Territory." The obligation of this law would not have been greater, nor other than it now is, if the act had proceeded to declare that, if the pre-emption performed the conditions prescribed by it, his right should not cease nor become void, and the land should not thereafter be purchased by any other person. And independently of any particular expressions, the general import of the whole section is, not merely to reserve this land from general sale, and to take away all authority to sell it, except in the case provided for, to any one but the pre-emptioner, but to make it a violation of the right secured by the act, and a breach of the act itself, for the administrative officer to sell or convey it to any other person.

The effect of this act of 1811, so far as revived by the act of 1820, was therefore twofold: 1st. It conferred a right upon Alexander McDugall in the case presented, and it made it the imperative duty of those within whose province it falls to exercise the law to deliver to him a patent conveying a title in conformity with that right. 2dly. It took away all legal authority to permit Wm. B. Robertson to enter the land at private sale, to receive the price of it from him, to give him a certificate of purchase, or to issue a patent purporting to convey him a title. These acts being unauthorized and void, cannot constitute any legal impediment in the way of performing the duty which Congress has imperatively required.

There is a clear distinction between this class of cases where there is a defect of authority, and another class where the authority is ample, the subject-matter within its limits, but the officer is intrusted with a discretionary power to decide certain questions, and in the exercise of that power he decides, and an act is done founded upon or in pursuance of that decision. Though the decision be erroneous, the precise power conferred has been exercised in the precise case contemplated, and the officer may be functus officio. In the other class of cases, where there is an excess of authority or jurisdiction, even courts of justice, which are usually shielded by judicial irresponsibility, are no longer protected, and their acts are void.

In the case of Ross vs. Borland (1 Pet., 656,) the Supreme Court held a junior patent to prevail against an elder one on two grounds:

1st. That the junior patent, which issued upon a certificate of a donation claim prior in date to the other patent, would overreach it by the local law, which was admissible.

2d. That the junior patent issued on the certificate of a board of commissioners west of Pearl river, whose decisions were final—in other words, the second patent issued upon legal authority, the first did not, and therefore the second must prevail. More recently, in the case of Brown vs. Clements (3 How., 650,) it was directly adjudged by the Supreme Court that the second patent prevailed

over the first where the first was not legally issued. In the opinion of the court it was the duty of the surveyor general to lay out a fractional section in such manner that an entire quarter section might he had if the section would admit of it. He had made a survey dividing the fractional section by a discretionary or arbitrary line, so as to prevent a regular quarter section from being taken up. The first patent issued for the part on one side of the arbitrary line, and was therefore held not to prevail against the second patent issued for the regular quarter section, both patents covering the land in controversy. In the dissenting opinion it is said, "You can only go behind and give it earlier date from a precise legal entry for the same land made by the grantee to overreach an older patent, as this court held in Ross vs. Borland." There was a difference of opinion as to the existence of any illegality, not as to its effect, if it in fact existed. In the case of Stoddard vs. Chambers (2 How., 285,) it was held, "where the holder of a New Madrid certificate located it on lands which were reserved from sale at the time of issuing the patent, that the patent was void." The marginal note of the reporter is in these words: "If two patents be issued by the United States for the same land, and the first in date is obtained fraudulently or against law, it does not carry the legal title. A patent is a mere ministerial act, and if it be issued for lands reserved from sale by law it is void."

Mr. Justice McLean, in delivering the opinion of the court, makes use of the following language: "Upon these facts the important question arises whether the defendant's title (a patent) is not void? That this is a question as well examinable at law as in chancery will not be controverted. That the elder title must prevail in the action of ejectment is undoubted. But the inquiry here is, whether the defendant has any title as against the plaintiff." * * * "No title can be held valid which has been acquired against law, and such is the character of the defendant's title so far as it trenches on the plaintiff's. It has been argued that the first patent appropriates the land and extinguishes all prior claims of inferior dignity. But this view is not sustainable. The issuing of a patent is a ministerial act, which must be performed according to law." * * * "It cannot be contradicted or explained by parol; but if it has been fraudulently obtained, or issued against law, it is void. It would be a most dangerous thing to hold that a patent should carry the legal title though obtained fraudulently or against law."

It is evidently, therefore, the view of the Supreme Court that a patent issued without authority of law, or against law, is not voidable merely, but void; and being therefore a nullity, and as though it did not exist, it leaves the duty unimpaired to convey the title to the rightful owner.

Of the earlier opinions of the Attorneys General those of Mr. Wirt and Mr. Butler recognise the total invalidity of the elder patent issued by mistake to one not entitled to receive it, and the continued power and obligation to issue a second to the person who had a just claim to it. Of the latter opinions, those of Mr. Legaré and Mr. Clifford refer with approbation to the case of Jackson vs. Lawson, (10 John. Rep., 26,) in which the Chief Justice, in delivering the opinion of the court, says: "Unless letters patent are absolutely void on the face of them, or the issuing of them was without authority, or was prohibited by statute, they can only be avoided in a regular course of pleading, in which the fraud, irregularity, or mistake, is directly put in issue;" thus clearly admitting that if a patent issued without authority of law, or against law, it was in itself absolutely void.

For these reasons it is my opinion that the elder patent issued to William B. Robertson nearly twenty-three years after the land embraced in it had been purchased and paid for by Alexander McDugall was issued without authority of law, and was therefore void, and that a patent should now issue to McDugall.

I came to this conclusion with greater satisfaction because it is in conformity with strict right and justice that the error should be corrected where it arose, without sending the party suffering by it to seek his redress through an expensive and vexatious litigation.

I have the honor to be, sir, very respectfully, your ob't servant,

ISAAC TOUCEY.

Hon. R. J. WALKER,
Secretary of the Treasury.

Certificate annexed to foregoing Exhibit.

UNITED STATES OF AMERICA.

TREASURY DEPARTMENT, *October 26th*, 1854.

Pursuant to the act of Congress of 22d February, 1849, I hereby certify that the annexed copy of the original opinion of the Attorney General, dated the 29th of July, 1848, and numbered from 1 to 10, inclusive, and taken from the files in this Department, is a true copy.

In witness whereof I have hereunto set my hand and caused the [SEAL.] seal of the Treasury Department to be affixed, on the day and year first above written.

P. G. WASHINGTON,
Acting Secretary of the Treasury.

Exhibit A No. 9.—Filed with Plea and Answer of F. Hudson to Sup'l Bill, 24th Feb'y, 1855.

The United States of America to all whom these presents shall come, greeting:

Register's Certificate No. 8.

Whereas, heretofore, to wit, on the 16th April, 1841, a patent was issued from the General Land Office to one David Michael Hughes on an entry made at private sale the 14th of May, 1836, per New Orleans certificate 644, for lot number one, (north side of Bayou Goula,) or section fifty-four, in township ten, of range twelve east, as containing one hundred and seventy-five acres and forty-six hundredths of an acre; and whereas John Goodbee, of Iberville parish, Louisiana, had deposited in the General Land Office of the United States a certificate of the register of the land office at New Orleans, Louisiana, whereby it appeared that lot number one, north side of Bayou Goula, or section fifty-four, in township ten of range twelve east, situated in the district of lands subject to sale at New Orleans, Louisiana, and containing one hundred and seventy-five acres and forty-six hundredths of an acre, had been entered the 26th February, 1822, by the said John Goodbee:

Now know ye, that the United States of America, in consideration of the premises, in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant unto the said John Goodbee, and to his heirs, the said lot number one, or sec. 54, T. 10, R. 12 E., above described, the outstanding patent in favor of David Michael Hughes, dated the 16th of April, 1841, to the contrary notwithstanding, the above patent to Hughes being illegal: to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances of whatsover belonging, unto the said John Goodbee, and to his heirs and assigns forever.

In testimony whereof I, Zachary Taylor, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, on the fifteenth day of March, in the year of our Lord one
[SEAL.] thousand eight hundred and forty-nine, and of the independence of the United States the seventy-third.

By the President.

Z. TAYLOR.

L. H. LAUGHLIN,
Recorder of the General Land Office.

Rec. Miscellaneous, vol. 2, pages 245, 246.

GENERAL LAND OFFICE, *October 27th*, 1854.

I, John Wilson, Commissioner of the General Land Office, do

hereby certify that the annexed is a true and literal exemplification from the patent records of this office.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of this office to be affixed, at the city of [SEAL.] Washington, on the day and year above written.

JOHN WILSON,
Commissioner of the General Land Office.

Plat of Exhibit A No. 10.—Filed with Plea and Answer of F. Hudson to Sup'l Bill, Feb'y 24th, 1855.

[*For plat see original, page* 169.]

T. 10 *S.*, *R.* 12 *E.*

Field-notes of the surveys made on the north side of Bayou Goula, beginning at the walnut stump which stands 59 lks. N. 11¾ E. from the northwest corner of section No. 14, and run on the upper side line of lot No. 54.

N. 11° 45′ W. 26.00; leave improvement, enter cane.
100.00 ch's; enter low cane land; same appearance of overflow; 115.00 entered swamp.
116.50 set post; maple bore N. 85 W. 10 lk's; hackberry N. 69 c. 30 lk's.

Description.—In the cane the timber is very scarce. The cane land is high with timber—oak, gum; in the swamp, cypress, gum, oak, ash, hackberry; and overflow 2 to 4 feet.

Returned to the walnut stump and run down the bayou the following courses and dist., viz., in front of 54:

S. 58° W. 7.00; S. 72 W. 800; set post corner to lots 54 and 55, in front of 55.

S. 57 W. 7.50; S. 23 W. 650; S. 3 E. 550; S. 22 W. 1.00; set stake corner to lot 55 and 56.

S. 22° W. 6.00 ch's; S. 41 W. 6.00 ch's; S. 15 W. 5.00 ch's; S. 43 W. 5.10 ch's; set post corner to lots Nos. 56 and 57; sycamore bore N. 47 W. 75 lks.

S. 48 W. 16.55 ch's; set post corner to lots Nos. 57 and 58; mulberry S. 40 W. 20 lks.; S. gum N. 5 W. 16 lks.; S. 4.

Between lots 57 and 58:

N. 11° 45′ W. 20.00; leave fence, entered cane 76.00 ch's; leave cane.
107.00 set stake; corner to lots 57 and 58, which a sycamore bore S. 31 W. 22 lks., cypress bore S. 62 E. 13 lks.; timber, oak, gum, cypress, ash, hackberry, maple, and elm.

N. 78° 15′ E. 7.00; on the back of lot No. 57, entered cane.

14.50; set stake corner to lot 57; oak bore N. 78 W. 74 lks.

N. 11° 45′ W. 18.00; on the lower side line of lot 56 leave cane; enter open woods.

52.20; set corner to lot No. 58 on a maple marked for corner on the back of lot No. 56.

N. 78° 15′ E. 14.50; set stake corner to 55 and 56, from which an oak bore 45 W. 11 lks.; ash N. 62 E. 20 lks.

N. 78° 15′ E. 13.22; on the back of lot No. 55 set post corner to lots Nos. 54 and 55, from which ash bore S. 27 E. 16 lks.; maple S. 20 E. 7 links, on the back of lot 54.

N. 78° 15′ E. 14.87; intersected upper side line of lot No. 54, and fell 15 lks. to the right of post; overflow 4 feet.

* * * * * * * *

December 14th, 1830.

(Signed) THOS. J. COLLINS,
Deputy Surveyor.

(Signed) JOSEPH PULLIAM,
ANDREW ROSS,
Chain Carriers.

SURVEYOR'S OFFICE,
Washington, Miss., December 8th, 1831.

The foregoing field-notes of township 10, range 12th east, in the southeast district, La., west of the Mississippi, returned by Thomas J. Collins, deputy surveyer, have heretofore been examined and approved by A. F. Righter, then principal deputy surveyor of said district, as appears by his certificate on the deputy surveyor's account for the work, bearing date 14th December, 1830, and on the map of the township, bearing date 4th January, 1831; which field-notes and map were approved by the late surveyor of public lands south of Tennessee, Joseph Dunbar, esq., as appears by his certificate on the township map dated 4th March, 1831; have, according to instructions from the Commissioner of the General Land Office, been re-examined; and although the form of keeping the notes and expressions used in them are not as satisfactory as is desirable in some instances, yet it is believed they will serve the purposes intended, and are therefore approved and paid for by me.

(See check No. 32.)

(Signed) GIDION FITIZ,
Surveyor of Public Lands south of Tennessee.

SURVEYOR GENERAL'S OFFICE,
Donaldsonville, 1st July, 1841.

I do hereby certify the foregoing to be a true copy of the original field-notes on file in this office.

(Signed) H. F. WILLIAMS,
Surveyor General, La.

GENERAL LAND OFFICE, *October 27th*, 1854.

I, Charles S. Frailey, acting Commissioner of the General Land Office, do hereby certify, that the annexed copies of so much of the original field-notes and plat of township 10 S., R. 12 E., southeastern district of Louisiana, as have reference to lot 1, section 54, of the township, are true and literal exemplifications of the records in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.]

(Signed) CHAS. S. FRAILEY,
Acting Commissioner of the General Land Office.

Supplemental Answer of Hughes.—Filed 12th April, 1855.

Circuit Court of the United States for the eastern district.

DAVID M. HUGHES
vs.
THE UNITED STATES.

In April, A. D. 1855. And now at this time, to wit, on this day of April, A. D. 1855, came the defendant, David M. Hughes, and by leave of the court filed this his supplemental answer, and thereupon, and by way of supplement, further answering, saith:

That since filing his preceding answer, this respondent hath obtained in the supreme court of the State of Louisiana two several judgments of said court, in two separate and distinct suits, both instituted in the district court of said State for the parish of Iberville, being the same parish in which the land in controversy is situate. One of said suits (being the first in time) was instituted by your respondent against Robert Sewall, the tenant in possession and claimant of title, to establish respondent's title and to recover possession of said land. And having obtained judgment in said district court, the said defendant appealed therefrom to the said supreme court of the State, which judgment the said supreme court, on the day , A. D. 1855, have finally and fully affirmed; and all which respondent will verify by the record and judgment of said court to be produced.

And respondent shows to this honorable court that the record of said suits was instituted by the said Robert Sewall and one Franklin Hudson, claiming to own the same land in controversy jointly, and resting their claim on a patent of the United States issued to them for the same land on the day of , A. D. 18 , and long subsequent to the patent of respondent for the same land; and by their petition and proceedings in said court they sought to overreach, supersede, and set aside the patent of your orator, upon the same exhibition of land office documents preceding the patents, and upon the same allegations of fraud against respondent that at

the instance and in behalf of the said Sewall and Hudson are set forth by the attorney of the United States in the petition filed in this case in your honorable court; and the same redress was sought by the said Sewall and Hudson to relieve their pretended title from the same alleged fraud of this respondent as by the agency and assistance of the United States they are seeking to avail them in this case.

But respondent shows that the merits of the case, so then and there presented by the said Sewall and Hudson against this respondent, were then and there in said district court of the parish of Iberville adjudged against said petitioners and in favor of your respondent; and upon appeal to the supreme court of the State of Louisiana, the judgment of said district court on the day of , A. D. 1855, and since filing respondent's previous answer, has been affirmed in favor of respondent and against said Sewall and Hudson; and all which respondent will verify by the record to be produced.

And respondent doth hereby present the matters adjudicated on said last mentioned case as conclusive in bar of the same matters, affecting the same interests and between the same parties or their privies, involved in this case; and more specially does he rely upon the fact in said record appearing that the United States since the pendency of this suit have parted with all their title to the lands in controversy, (if any they had since their previous patent issued to respondent;) and that said subsequent patent has assigned and transferred all the rights and interest of the United States to said land to the same persons and parties for whom and for whose use the United States instituted this suit. And respondent prays the same advantage hereof as if formally plead pius davien continuance; and that this suit be dismissed.

(Signed) JOHN HENDERSON,
Sol. for Hughes.

This supplemental answer, relying only on matters avouched of record to be produced, is filed by leave of the court, without being sworn to.

JOHN HENDERSON.

(Endorsed:) Service accepted.
(Signed) E. WARREN MOÏSE,
U. S. Attorney.

Record in case of Sewall and Hudson vs. D. M. Hughes.—Filed 31st July, 1855.

ROBERT SEWALL and FRANKLIN A. HUDSON
vs.
DAVID M. HUGHES.
} No. 300.

Be it known, that on the 5th day of February, A. D. 1850, a

petition was filed in this cause, in the words and figures following, to wit:

To the Honorable District Court of the *District Court of the* district in and for the parish of Iberville, the petition of Robert Sewall, resident of said parish of Iberville, and Franklin A. Hudson, residing in Montgomery county, in the State of New York, respectfully shows:

That your petitioners are the lawful owners of a tract of land lying and being in the parish of Iberville, situated on the north side of Bayou Goula, being lot number one, of town. ten, range twelve east, containing one hundred and seventy-five acres and fifty-six hundredths of an acre of land, for which they obtained a patent from the government of the United States, signed by the President of the United States, and delivered to them on the 15th day of March, 1849, which patent, for greater certainty, is exhibited and a copy annexed to this petition.

Your petitioners allege, that on the twenty-second day of February, in the year one thousand eight hundred and twenty-two, a certain John Goodbee, who was at that time an inhabitant of the State of Louisiana and district aforesaid, did deliver a notice in writing to the then register of land office of the United States at New Orleans to the effect that he, the said John Goodbee, claimed to be entitled to preference, in the purchase from the United States, at private sale, of a certain tract, piece, or parcel of land, designated as lot "one," lying principally on the north side of the Bayou Goula, and within the district of lands subject to entry at the said land offie of the United States at New Orleans; which claim for preference in purchase over all other persons was made by the said John Goodbee under and by virtue of an act of Congress of the United States entitled "An act for the final adjustment of land titles in the State of Louisiana and Territory of Missouri," approved the twelfth day of April, one thousand eight hundred and fourteen, as will be seen by Exhibit (A) filed herewith.

And your petitioners further allege, that the said John Goodbee did, on or about the day and date aforesaid, to wit, the twenty-second day of February, 1822, furnish satisfactory proof of the register of the land office of the United States at New Orleans, and to the receiver of public moneys for district of lands subject to entry at the aforesaid land office, that he the said John Goodbee was entitled, under and by virtue of the statutes of the United States in such case made and provided, to the preference which he claimed as above set forth, in becoming the purchaser of the aforesaid lot number "one," being principally on the north side of Bayou Goula, in the State of Louisiana, as aforesaid, as will be seen by Exhibit A, filed herewith.

And your petitioners further allege, that on the day and date aforesaid, to wit, on the twenty-second day of February, in the year 1822, the said lot number "one," lying on the *nord* side of Bayou Goula, in the State of Louisiana aforesaid, was supposed to contain one hundred and sixty acres of land, but the exact contents of its area could not at that time be better ascertained, and that its description by bearings and distances, as they are usually expressed in the technical language of surveyors, could not at that time be more accurately set forth and distinguished, on account of the fact that at that time the connexion of the public surveys, embracing the aforesaid tract of land styled lot number "one," lying on the north side of the Bayou Goula, in the State of Louisiana, had not then been made by the United States surveyor, and returned to the aforesaid local land office in New Orleans.

Your petitioners further allege, that on the day and date aforesaid, to wit, on or about the twenty-second day of February, 1822, the said John Goodbee did pay to the receiver of public moneys at New Orleans the sum of two hundred dollars, being the full sum and price, at the lawful rate of one dollar and twenty-five cents per acre, for one hundred and sixty acres of land, which said tract or lot of land was supposed to contain at the time, to the knowledge of said John Goodbee, and of the said register and receiver at New Orleans, which will be seen by Exhibit (B,) herewith filed; and that thereupon, that is to say, upon the payment of the two hundred dollars aforesaid, for the lot of land aforesaid, by John Goodbie aforesaid, the receiver of public moneys aforesaid did then and there issue and deliver to John Goodbie aforesaid a certificate in the usual and legal in such cases; that the said John Goodbie had a right to a preference in the purchase at private sale of the aforesaid lot, piece or parcel of land, then only known and described as "lot number one, lying on the north side of Bayou Goula."

Your petitioners further allege, that subsequently, when the connections of the public surveys were completed for the district of *county* comprehending the aforesaid portion of land, and were returned into the land office at New Orleans, the said lot, piece or parcel of land was found to be accurately described as "lot number one, on the north side of Bayou Goula, in section number fifty-four, in township ten, west of the Mississippi, of range twelve east," and was by the return aforesaid found to contain one hundred and seventy-five acres and forty-six hundredths of an acre.

Your petitioners further allege, that by the reason of the various acts and doings of the said John Goodbie, on or about the aforesaid twenty-second day of February, 1822, that is to say, his notices to the register of the land office aforesaid at New Orleans, to satisfactory proofs by him the said John Goodbee, then and there furnished as aforesaid of his right to a preference in the purchase of the aforesaid piece or parcel of land, the payment of two hun-

dred dollars by him the said John Goodbie as aforesaid, to the receiver of public moneys, and by the certificate of his being entitled to a preference in the purchase of the aforesaid piece or parcel or lot of land, given, issued or delivered to him the said John Goodbie, by the register of the land office at New Orleans, as aforesaid, the said John Goodbie did become entitled to enter said lot, piece or parcel of land, and that he the said John Goodbie did enter the said land on the twenty-sixth day of the said month of February, 1822, and that by reason of the facts as aforesaid, he the said John Goodbie was then and there entitled to a preference for the purchase not only of the amount of one hundred and sixty acres, which the lot aforesaid was then and there supposed to contain, and which could not then be more accurately ascertained, but that he the said John Goodbie was then and there entitled to such preference for the entire tract, such as it then existed, and as it was afterwards found to be when the connection of the public surveys for the district of *county* embracing the said tract was perfected, as has been already fully set forth, as will be seen by Exhibit C, therewith filed, and that after the twenty-sixth day of February, 1822, no part or portion of the said piece or parcel or lot of land number one, on the north side of the Bayou Goula, in section number fifty-four, in township ten, west of the Mississippi, of range twelve east, containing one hundred and seventy-five acres and forty-six hundredths of an acre, was susceptible of being sold by the United States to any other person, nor liable to be entered by any other person in any manner than by the said John Goodbie; and that subsequently, to wit, on the third day of April, in the year one thousand eight hundred and forty-six, the assigns of said John Goodbie did pay to the receiver of public moneys at New Orleans the sum of nineteen dollars and thirty-two cents, being the difference between the price of two hundred dollars and that of two hundred and nineteen dollars and thirty-two cents, the former being the price of one hundred and sixty acres, which the said piece, parcel or lot of land was supposed to contain at the date of the original entry, to wit, on the twenty-second day of February, 1822, and the latter being the price of one hundred and seventy-five acres and forty-six hundredths of an acre, which said tract of land was found to contain when the connection of the public surveys *were* completed, and that the payment so made by the assigns of John Goodbee was intended and taken as a completion of, and as a part and parcel of his original entry, as will be seen by Exhibit D, herewith filed.

Your petitioners further allege, that on or about the fourteenth day of May, in the year 1836, one david Michael Hughes, who resides near the town of Alexandria, in the State of Louisiana, did make an application to the register of the United States land office at New Orleans, to be allowed to enter and to purchase at pri-

vate sale the aforesaid piece, parcel, or lot of ground, falsely representing to the register that the said land was liable to entry and sale; that the said David Michael Hughes was then and there, by the said register of land office, permitted to enter the said land as if the same was liable to private entry.

And the said David Michael Hughes, still falsely representing the said land as liable to private entry and sale, did, on the day and date aforesaid, to wit, on the fourteenth day of May, 1836, pay to the receiver of public moneys for the district of lands subject to entry at New Orleans the sum of two hundred and nineteen dollars and thirty-two cents, and that there was then and there issued and delivered to the said David Michael Hughes by the register of the land office at New Orleans aforesaid, the usual certificate given in such cases.

Your petitioners further allege, that on the sixteenth day of April, 1841, the said David Michael Hughes did present to the Commissioner of the General Land Office at Washington city the certificate aforesaid, so issued to him by the register of the United States land office in New Orleans, as aforesaid, and still falsely representing that the land aforesaid was subject to private entry and sale; that he, the said David Michael Hughes, had legally paid for the same, and procured the said Commissioner of the General Land Office of the United States to issue and deliver to him, the said David Michael Hughes, a patent in the usual form, appearing to confirm unto him, the said David Michael Hughes, the aforesaid land.

Your petitioners further allege, that all the acts and doings of the register of the land office and the receiver of public moneys at New Orleans, in permitting said David Michael Hughes to enter and pay for the said land, were done in error, and were at the time, and are now, null and void, and that the acts and doings of the Commissioner of the General Land Office at Washington city, in issuing a patent to the said David Michael Hughes, were also then, and are now, null and void, because the said land had, as above set forth, long before been sold by the United States to John Goodbee, and that the said David Michael Hughes is bound in equity and good faith, to restore and give up said patent, and not to pretend to, or set up under the same, any title to the said land.

Your petitioners further allege, that as soon as the errors were discovered, which had been made in issuing a patent for said land to David Michael Hughes, and in the various acts and doings of the officers of the United States at New Orleans, preparatory thereto, and before the institution of these present proceedings, the said David Michael Hughes was amicably requested to give up and restore said patent to the Commissioner of the General Land Office, and to receive back from the Treasury of the United States the

aforesaid sum of two hundred and nineteen dollars and thirty-two cents, which he had erroneously paid for said land to the receiver of public moneys at New Orleans, and that the said David Michael Hughes was then and there fully informed of all the errors which had been committed in said proceedings; but that he, the said David Michael Hughes, utterly refused to take back the said money, and to restore and give up the patent for the said land obtained by him through fraud and misrepresentation as aforesaid, and on the contrary, he, the said David Michael Hughes, insists in holding said patent.

Your petitioners further allege, that on the twenty-seventh day of January, 1822, the said John Goodbee conveyed all his rights in the said lot of land, known as lot number one, section fifty-four, to Reuben Bush, by an act of sale passed before John Dulton, parish judge of Iberville, and that the said Reuben Bush conveyed the aforesaid lot number one to Robert Loyd on the nineteenth day of June, 1824, by an act of sale passed before the said John Dulton; and that on the twenty-fifth day of April, 1825, Robert Loyd conveyed, among other things, one equal undivided half part of said lot number one to Silas F. Hudson; and that on the second day of July, 1827, Robert Loyd conveyed to Silas F. Hudson, among other things, the other equal half part of lot number one, section fifty-four, on the north side of Bayou Goula, as aforesaid; which several acts of sale were passed before John Dulton, parish judge of Iberville.

Your petitioners further allege, that on the seventeenth day of March, 1836, the said Silas F. Hudson conveyed, among other things, the undivided half part of said lot number one, section fifty-four, to William M. Lambeth, by an act of sale passed before Adolphe Mazureau, notary public in and for the parish and city of New Orleans, and that the said William M. Lambeth and Georgeana, his wife, conveyed the aforesaid half of lot number one, section number fifty-four, among other things, to Robert Sewall, by an act of sale passed before Adolphe Mazureau, notary public of New Orleans, on the twenty-fifth day of January, 1841.

Your petitioners further allege, that Silas F. Hudson died on or about the tenth day of October, 1839, and that Franklin A. Hudson, one of your petitioners, is the only surviving heir of said Silas F. Hudson, and as such succeeded to the rights of said Silas F. Hudson in the aforesaid lot number one, of section fifty-four, and is now with Robert Sewall in possession of the same, which possession has been constant and uninterrupted in those under whom they claim, from the twenty-second day of February, 1822, when the land was entered by John Goodbee, as declared above, until 184 , when a suit was instituted by said David Michael

Hughes in the late district court of this State, in the parish of Iberville, against Robert Sewall, for the land upon his above described patent, and Franklin A. Hudson, one of your petitioners, was called in to defend the above title as owner and warrantor.

Your petitioners further allege, that the patent under the entry of John Goodbee had not then issued from the government of the United States, nor had the illegal and fraudulent conduct of the said Hughes above described been fully discovered, and for the want of allegations and proofs of the same, and for the want of a patent by the defendants, judgment was rendered against your petitioners in favor of David Michael Hughes for the whole of the above described tract of land, from which judgment your petitioners appealed to the supreme court of this State, where the same is now pending and undecided by the said supreme court.

Your petitioners further show, that the frauds and illegal conduct of said David M. Hughes, and the errors of the officers employed in the land office of the United States, were shortly afterwards fully discovered, as above set forth, and on application of your petitioners to the General Land Office of the United States, a patent on the entry of the aforesaid John Goodbee was issued by the President of the United States to him, reciting the frauds and illegal conduct of the said Hughes, and errors of the officers of the land office of the United States, and declaring the patent of said Hughes illegal, and reciting and declaring the full right and title of those under whom your petitioners hold the land to the same.

Your petitioners further allege, that if these things had been set forth and proved on the trial of the cause in the late district court, the judgment would have been rendered in their favor and against the said David M. Hughes, instead of being rendered against them. Because they do not appear in the record of our appeal to the supreme court, our just and equitable rights are greatly endangered in that court.

Your petitioners allege, that the said David M. Hughes in good conscience ought to abandon said suit, or at least suspend the trial before the supreme court, until a judicial decision between them on the above facts, which he refuses to do, but persists in endeavoring to have the cause tried by the supreme court of the State.

Your petitioners allege, that for the reasons and allegations heretofore set forth, they are entitled to have the patent of the said David M. Hughes annulled; and also the judgment of the late district court of the State, in the parish of Iberville, in favor of said David M. Hughes against your petitioners, annulled and declared void and of no effect; and that the possession and title of your petitioners to the said tract of land confirmed and made valid by judgment against said David M. Hughes, and all others, and to a judgment for one thousand dollars damages, which the said David M.

Hughes has fully caused them by his illegal and unconsciencious acts as above set forth.

Your petitioners allege that the illegal and inequitable conduct of said David M. Hughes renders it absolutely necessary that an injunction against him should issue, enjoining him from the trial of the appeal in the Supreme Court until the trial of this suit, and that the said court be notified of the same.

Wherefore your petitioners respectfully pray, the premises and annexed documents or exhibits being considered, that the said David M. Hughes, who resides in the parish of Rapides, may be cited to appear and answer this petition, and after all due legal proceedings had, that judgment may be rendered against him in favor of your petitioners; that the said tract of land, lot number one, section fifty-four, in township ten, range twelve east, belongs to your petitioners, and that they shall remain undisturbed in their possession and title to the same, and that the patent issued in favor of said David M. Hughes may be annulled, and that the judgment of the late district court of this State in his favor, against your petitioners, may be declared by judgment null and void; and that the said David M. Hughes may be condemned to pay your petitioners one thousand dollars damages, which he has caused them by his illegal and unconsciencious acts and doings as aforesaid.

And your petitioners further pray, the premises and annexed affidavit being considered, that on giving bond and security in such sum as may appear right, conditioned as the laws direct, that an injunction may issue to the said David M. Hughes, enjoining him from proceeding to try the cause pending between him and them on an appeal before the supreme court of this State until the trial of this suit, and that the supreme court of this State be notified of the same and requested not to try said appeal until the decision of this court.

And your petitioners pray for all other and further relief, which justice, equity, and the nature of the case may require, and that this cause may be tried by a jury; and, as in duty bound, will ever pray.

(Signed) ISAAC T. PRESTON,
Att'y for Pet'rs.

STATE OF LOUISIANA,
Parish of East Baton Rouge.

Holmes Hutchison, agent of Robert Sewall and Franklin A. Hudson, plaintiffs in the above suit, being duly sworn in the absence of the plaintiffs, doth depose and say, that the statements in the foregoing petition are true to the best of knowledge, information and belief, and that he believes an injunction is indispensably necessary to prevent the trial of the case of David M. Hughes in the supreme court of the State until the trial of this cause, and that he greatly fears the plaintiffs will lose the benefits of the

patent granted for their use to the land in controversy by the government of the United States, if the said cause in the supreme court be tried before the trial of this suit, and that this affidavit is not made for delay, but solely to obtain justice.

(Signed) HOLMES HUTCHISON.

Sworn to and subscribed at Baton Rouge, this 4th day of February, 1850.

(Signed) JOHN DUFROCK,
Justice of the Peace.

It is ordered that an injunction issue as prayed for, and the plaintiffs giving bond and good security in the sum of two thousand dollars, conditioned as the law directs.

And it is further ordered that a copy of this petition, order and writ of injunction be delivered to the supreme court of the State.

Baton Rouge, February, 4th, 1850.

(Signed) T. T. BURK,
Judge Sixth Jud'l Dist.

A.—Abstract of land entered at the land office at New Orleans, as settlement-rights, in virtue of the 5th section of the act of 12th April, 1814, entitled "An act for the final adjustment of land titles in the State of Louisiana and Territory of Missouri," from the day of to the day of

When entered.	Number of receipt and certificate.	By whom entered.		Tract purchased.				Quantity.		Price per acre.		Purchase money.		Water-course.	Gen'l Land Office Tract Book.		Remarks by Surv. General La., May 27th, 1844.
		Name.	Where situated.	Section or part of section.	No. of sec.	No. of town'p.	No. of range.	Acres.	100ths.	Dollars.	Cents.	Dollars.	Cents.		Vol.	Fol.	
1822. Feb. 26.	8	John Coobee.	Cy. Iberville.	Lot No. , (in red.) Sec. 54, bayou Goula, north side.	54	10	12	150	.....	1	25	200	.....	Par. of Iberville.	2	182	Contains 175 acres, as per map.

GENERAL LAND OFFICE, *August 14th*, 1846.

I, James H. Piper, Acting Commissioner of the General Land Office, do hereby certify that the above is a true and correct extract from the original on file in this office.

In testimony whereof I have hereunto subscribed my name, and caused the seal of this office to be affixed, [SEAL.] at the city of Washington, on the day and year above written.

(Signed) JAMES H. PIPER,
Acting Commissioner of the General Land Office.

Filed 5th February, 1850.
(Signed) PAUL DEBLIEUX, *Clerk.*

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Register of settlement rights sold in virtue of the 5th section of an act of Congress dated the 12th April, 1814, entitled "An act for the final adjustment of land titles in the State of Louisiana and Territory of Missouri."

Date of receipt.	No. of application and receipt.	Land, by whom purchased.		Tract purchased.	Quantity.		Rate per acre		Amt. purchase money.	
		Name.	Place of residence and location.	Water-course.	Acres.	Hund.	Dolls.	Cts.	Dolls.	Cts.
1822. Feb'y 26	8	John Goobee.	Cy. Iberville	Mississippi	161	.....	$1	25	200	00

GENERAL LAND OFFICE, *Aug. 14th*, 1846.

I, James H. Piper, Commissioner of the General Land Office, do hereby certify that the above is a true and correct extract from the original on file in this office.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of this office to be affixed at the city of Washington, the day and date above written.

[SEAL.]

JAMES H. PIPER,
Acting Commissioner of the General Land Office.

Filed 5th February, 1850.
(Signed) PAUL DEBLIEUX, *Clerk.*

LAND OFFICE, NEW ORLEANS,
23d February, 1846.

SIR: Your letter of the 10th inst., requesting a report of all the facts of the case of John Goobee's entry in February, 1822, under the act of 12th April, 1814, per certificate No. 8, has been received.

From the records of this office it appears that Mr. Goobee filed this application to purchase a tract of land under the pre-emption act of 12th April, 1814, designated as lot 1, lying principally on the north side of Bayou Goula; that the proof adduced being satisfactory to the register and receiver, a certificate bearing date 22d February, 1822, was issued by the register; that Mr. Goodbee had a right, and on the 26th day of same month the entry was completed.

It further appears, that on the tract-book under the President's proclamation of 11th August, 1823, lot No. 1, north side of Bayou Goula, is there registered in the order of sale, but opposite is written in the handwriting of Sam'l H. Harper, the then register, "sold," and on the same line in pencil, in handwriting of the register's clerk in 1836, "Hudson." Although thus registered under

the President's proclamation of a sale of land in 1823, there can be no doubt that the tract had already been disposed of, as the word sold indicated, and that it is the same lot designated in Mr. Goodbee's application, as may be traced *as* township plat 10, range 12 E., as section 54, sold to David Michael Hughes on 14th May, 1836, per certificate No. 644; the number of said section being No. 1 in the original plat, which No. is still retained in red ink on the plat by which Mr. Hughes was permitted to make his entry; and what may appear singular, Hughes' entry is the only one on record that had been offered at public sale, and thus rendered subject to "private entry," from the 6th day of July, 1835, to the 21st September, 1838, a period embracing upwards of three years.

I transmit herewith a copy of John Goobee's application, and of two affidavits enclosed therein.

Mr. Hughes has been notified to return his patent.

I have the honor to be, sir, very respectfully, your ob't serv't,

(Signed) PETER LAIDLAW, *Register.*

To the Hon'ble JAMES SHIELDS,
Commissioner of the General Land Office,
Washington city.

GENERAL LAND OFFICE, *August* 14*th*, 1846.

I, James H. Piper, Acting Commissioner of the General Land Office, do hereby certify that the foregoing, on pages 1 and 2, is a true and literal exemplification of the original on file in this office.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.]

(Signed) JAMES H. PIPER,
Acting Commissioner.

Filed 5th February, 1850.

(Signed) PAUL DEBLIEUX, *Clerk.*

Act of 12*th April*, 1814.

(West of Mississippi river.)

No. 8. LAND OFFICE AT NEW ORLEANS,
3*d April*, 1846.

It is hereby *certify*, that in pursuance of law, John Goobee, parish of Iberville, State of Louisiana, on the 26th day of February, 1822, purchased of the register of this office the lot No. one, north side of Bayou Goula, on section fifty-four, in township No. ten, of range No. twelve E., containing one hundred and seventy-five $\frac{46}{100}$ acres, at the rate of one dollar and twenty-five cents per acre, amounting to two hundred and nineteen dollars and thirty-two cents, for which the said John Goobee made payment in full,

as required by law. Now, therefore, be it known, that on presentation of this certificate to the Commissioner of the General Land Office, the said John Goobee shall be entitled to receive a patent for the lot above described.

Entered p. certif. No. 8, 160 acres by plat returned, sec. 54 of T. 10, R. 12, cont'g 175.46. Peter Laidlaw, register. Entered per act receiver. 15.46 at $1\frac{25}{100}$, $19 32.

No. 2,896½. RECEIVER'S OFFICE AT NEW ORLEANS,
3d April, 1846.

Received from John Goobee, of the parish of Iberville, the sum of nineteen dollars and thirty-two cents, being in full for the residue of the lot 1, north side Bayou Goula, or section No. fifty-four, in township No. ten S., of range No. twelve E., containing seventeen $\frac{46}{100}$ acres and forty-six hundredths; at $\$1\frac{25}{100}$ per acre, $19 32.

O. B. HILL, *Receiver.*

Commissioner's instruction, dated March 25th, 1846.

Endorsed, instructions from General Land , dated 25th March, 1846.

(Signed) P. LAIDLAW, *Reg.*

Filed 5th February, 1850.

(Signed) PAUL DEBLIEUX, *Cl'k.*

GENERAL LAND OFFICE, *August 14th*, 1846.

I, James H. Piper, Acting Commissioner of the General Land Office, do hereby certify that the annexed are true and literal exemplifications of the originals on file in this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office affixed, at the city of Washington, on the day and year above written.

[L. S.]

(Signed) JAMES H. PIPER,
Acting Commissioner of the Commissioner of the General Land Office.

CLERK'S OFFICE,
United States Circuit Court, fifth circuit and district of Louisiana.

I hereby certify the foregoing five pages and a half contain true copies of the original exhibits marked A, B, C, and D, annexed to the bill in chancery in suit of the United States vs. D. M. Hughes et als., numbered 1,666 of the record of this court.

Witness my hand and the seal of the said court at the city of New Orleans, this twenty-seventh day of January, A. D. 1848.

ED. RANDOLPH, *Cl'k.*

Filed 5th February, 1850.

(Signed) PAUL DEBLIEUX, *Cl'k.*

Exhibit A.

To the Register and Receiver of the eastern district of Louisiana:

GENTLEMEN: I apply to become the purchaser of a tract of land by virtue of settlement under the act of Congress of the 12th of April, 1814, situated as follows, in the parish of Iberville, principally on the north side of the Bayou Goula, designated as number one by the surveyor, and is the same land which was inhabited and cultivated by Daniel Beedle, or Biddle, in the year 1813, under whose settlement I claim by purchase.

This land belongs to the United States, and is not rightfully claimed by any other person, neither has said Biddle removed from the State. The land claimed has not been surveyed according to law, but I apply for the right of pre-emption to one hundred and sixty superficial acres, at the price provided by law, and offer proof of the facts set forth.

(Signed) JOHN GOODBEE.

No. 8.—The applicant having proved to the satisfaction of the register and receiver of the eastern district of Louisiana that he has a pre-emption right to the land claimed, I, in consequence, certify that he is entitled to one hundred and sixty superficial acres of land as applied for, subject, however, to the sectional or divisional lines to be hereafter run under the authority of the United States.

February 22d, 1822.

(Signed) SAM'L H. HARPER, *Register.*

Before me, John Dulton, judge in and for the parish of Iberville, personally appeared Charles Car, who being duly sworn on the Holy Evangelists, declares and says, that Daniel Beddle occupied and cultivated a tract of land lying on the Bayou Goula, in the parish of Iberville, in the year eighteen hundred and thirteen; that the said tract claimed lies partly on one side of the bayou (principally on the north side) and partly on the other side or south side of said bayou, and about at the distance of three miles from the Mississippi.

(Signed) CHARLES his ⋈ mark CAR.

Sworn and subscribed before me, this 25th day of January, A. D. 1819, at my office in the parish of Iberville.

(Signed) JOHN DULTON,
Judge of the Parish of Iberville.

Likewise came before me, judge aforesaid, Philip *Stop*, who being duly sworn, as the above named deponent, saith, that the said Daniel Biddle, or Bedle, occupied and cultivated the tract described

in the preceding declaration in the year one thousand eight hundred and thirteen.

his
(Signed) PHILIP ⋈ STOPE.
mark.

Sworn to and subscribed before me, this 17th day of April, A. D. 1819.

(Signed) JOHN DULTON,
Judge of the Parish of Iberville.

I certify the foregoing to be a true copy of the original on file in the land office for the district of lands subject to sale at New Orleans; and I further certify that the word "principally," interlined between the seventh and eighth lines on the first page, is also interlined in the original.

(Signed) CHARLES FISK, *Register.*

Filed 5th February, 1850.

(Signed) PAUL DEBLIEUX, *Clerk.*

Register's Certificate No. 8.

The United States of America to all whom these presents shall concern, greeting:

Whereas heretofore. to wit, on the 16th of April, 1841, a patent was issued from the General Land Office to one David Michael Hughes in an entry made at private sale on the 14th of May, 1836, per New Orleans certificate No. 644, for the lot number one, (north side of Bayou Goula,) or section fifty-four, in township ten, of range twelve east, as containing one hundred and seventy-five acres and forty-six hundredths of an acre: And whereas John Goobee, of Iberville parish, of Louisiana, had deposited in the General Land Office of the United States a certificate of the register of the land office at New Orleans, Louisiana, whereby it appeared that lot number one, north side of Bayou Goula, or section fifty-four, in township ten, of range twelve east, situated in the district of land subject to sale at New Orleans, Louisiana, and containing one hundred and seventy-five acres and forty-six hundredths of an acre, had been entered the 26th February, 1822, by the said John Goodbee: Now know ye, that the United States of America, in consideration of the premises, in conformity with the several acts of Congress in such case made and provided, have given, granted, and by these presents do give and grant unto the said John Goodbee, and to his heirs, the said lot number one, or section 54, T. 10, R. 12 E., above described, the outstanding in favor of David Michael Hughes, dated the 16th of April, 1841, to the contrary notwithstanding, the above patent to Hughes being illegal: to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature

belonging, unto the said John Goodbee and to his heirs and assigns forever.

In testimony whereof I, Zachary Taylor, President of the United States of America, have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed. Given under my hand, at the city of [SEAL.] Washington, on the fifteenth day of March, in the year of our Lord one thousand eight hundred and forty-nine, and of the independence of the United States the seventy-third.

By the President: Z. TAYLOR.

S. H. LAUGHLIN,
Recorder of the General Land Office.

Vol. 2, page 245.

Filed 5th February, 1850.

(Signed) PAUL DEBLIEUX, *Clerk.*

Injunction Bond.

STATE OF LOUISIANA,
Parish of Iberville.

Know all men by these presents that we, Franklin Hudson and Robert Sewall as principals, and Paul Hebert as security, are held and firmly bound unto David M. Hughes, his executors, administrators, and assigns, in the sum of two thousand dollars; for the payment whereof we bind ourselves, our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated in the parish of Iberville, on the 5th day of February, in the year of our Lord one thousand eight hundred and fifty.

Whereas the above bounden Franklin Hudson and Robert Sewall have filed in the office of the clerk of the district court in and for the parish of Iberville, a petition, oath, and order therein, praying for an injunction enjoining the said David M. Hughes from proceeding to try the suit between him, the said Hughes, and Franklin Hudson and Robert Sewall on an appeal before the supreme court, until the final trial of this suit:

Now the condition of the above obligation is such, that if the above bounden Franklin Hudson and Robert Sewall shall well and truly pay all costs and damages which may accrue or be sustained by the said David M. Hughes, in case it should be decided that the said injunction was wrongfully obtained, then and in that case the above obligation shall be void, or else to remain in full force and virtue.

(Signed) FRANKLIN A. HUDSON,
p. H. HUTCHINSON, AGT., [SEAL.]
ROBERT SEWALL, [SEAL.]
PAUL HEBERT. [SEAL.]

Filed 5th February, 1850.
(Signed) PAUL DEBLIEUX, *Clerk.*

Writ of Injunction to D. M. Hughes.

Sixth District Court, Parish of Iberville, State of Louisiana.

ROBERT SEWALL and FRANKLIN A. HUDSON
vs.
DAVID M. HUGHES. } No. 300.

The State of Louisiana to David M. Hughes, residing in the Parish of Rapides:

Whereas Robert Sewall and Franklin A. Hudson (by their agent, Holmes Hutchinson) have filed in the office of the clerk of said court a petition, affidavit, and order thereon, praying for a writ of injunction to issue to you, David M. Hughes, enjoining you from proceeding to try the cause pending between you and the said plaintiff, on an appeal before the supreme court, until the final trial of this suit above entitled and subscribed, and that the supreme court of this State be notified of the same and requested not to try said appeal until the decision of the above entitled and numbered cause, and said plaintiff having furnished security according to law: You are therefore commanded and strictly enjoined, in the name of the State of Louisiana, from prosecuting any further the trial of the said appeal until the final decision of the above entitled and numbered suit.

Witness J. J. Burk, judge of said court, this day of
[SEAL.] February, A. D. 1850.
(Signed) PAUL DEBLIEUX, *Cl'k.*

Sheriff's Return.

Received through the post office, Alexandria, La., parish of Rapides, Wednesday, the 20th day of February, A. D. 1850, and on Thursday, the 21st day of February, A. D. 1850, duly served David M. Hughes, in person, with a copy of this notice of injunction.

(Signed) CHARLES S. LECKIE,
Sh'ff of Parish Rapides.

Ret'd and filed 4th March, 1850.
(Signed) PAUL DEBLIEUX, *Cl'k.*

Citation.

State of Louisiana, Sixth Judicial District Court, Parish of Iberville.

ROBERT SEWALL and FRANKLIN A. HUDSON
vs.
DAVID M. HUGHES. } No. 300.

The State of Louisiana and said Court to David M. Hughes, residing in the Parish of Rapides, State aforesaid:

You are hereby summoned, either to comply with the demand contained in the petition of the said Robert Sewall and Franklin A. Hudson, of which a copy accompanies this citation, or to deliver your answer to the said petition in the office of the clerk of said court, held near Bayou Plaquemines, in said parish, within 35 days after service hereof.

Witness the Hon. J. J. Burk, judge of said court, this fifth day of February, in the year of our Lord 1850.

[SEAL.]

(Signed) PAUL DEBLIEUX,
Clerk of said Court.

(*Endorsed:*)

Received through the post office, Alexandria, La., parish of Rapides, Wednesday, the 20th day of February, A. D. 1850, and on Thursday, the 21st day of February, A. D. 1850, duly served David M. Hughes, in person, with a copy of this citation, and a duly certified copy of petition accompanying the same.

(Signed) CHARLES S. LUKE,
Sh'ff Par. of Rapides.

Ret'd and filed 4th March, 1850.

(Signed) PAUL DEBLIEUX, *Cl'k.*

Copy of J. Goodbee's Application and Register's Order.

To the Register and Receiver, &c., &c.:

I apply to become the purchaser of a tract of land situated in the parish of Iberville, principally on the north side of the Bayou Goula, designated as number one by the surveyor, and is the same land which was settled by David Beedle, whose legal representative I am by purchase. I claim 160 superficial acres, and offer proof, &c.

(Signed) JOHN GOODBEE.

To the principal Deputy Surveyor S. E. district of Louisiana:

No. 8.

The applicant having proved to the satisfaction of the register and receiver for the eastern district of Louisiana that he has a pre-emption right to the land claimed, I, in consequence, certify that he is entitled to 160 superficial acres of land as applied for, subject to be circumscribed by the sectional or divisional lines to be hereafter run, under the authority of the United States, at the price of $1 25 per acre, which he has paid.

May 18th, 1822.

(Signed) SAM'L H. HARPER, *Register.*

SURVEYOR GENERAL'S OFFICE,
Donaldsonville, La., February 23d, 1850.

I hereby certify the above to be a true copy of a document on file in this office.

(Signed) R. W. BOYD,
Surveyor General La.

Filed 11th March, 1850.
(Signed) PAUL DEBLIEUX, *Clerk.*

Minutes, 12th March, 1850.

SEWALL & HUDSON vs. DAVID M. HUGHES. } No. 300.—Continued.

Defendant's Exceptions.

ROBERT SEWALL and FRANKLIN A. HUDSON vs. DAVID M. HUGHES.

The above defendant, by his attorneys, moves this honorable court to dissolve the injunction granted in the above case, upon the case made by the petition, on the ground that there is no case presented therein for a writ of injunction.

(Signed) J. & J. HENDERSON,
Att'ys for Defendant.

The above defendant, by his attorneys, pleads as an exception in liminis lites, that the petition in the above suit is defective, uncertain, and insufficient in the statement of the cause of action. Wherefore defendant prays a dismissal of said suit, with costs.

(Signed) J. & J. HENDERSON,
Att'ys for Defend't.

And as a pre-emptory exception to said petition, said defendant, by his said attorneys, pleads the prescription of one year to the action of nullity set forth in said petition, for your respondent expressly charges that the alleged frauds against this defendant in said petition were fully known to said plaintiffs for more than one year previous to the institution of the present suit. Wherefore defendant prays this honorable court to dismiss said suit, with costs.

(Signed) J. & J. HENDERSON,
Att'ys for Defd't.

Filed 14th March, 1850.
(Signed) PAUL DEBLIEUX, *Clerk.*

Copy of Goodbee's Application and Surv'r Gen'l's Letter.

SURVEYOR GENERAL'S OFFICE,
Donaldsonville, La., March 11th, 1850.

WM. E. EDWARDS, Esq., *Plaquemines.*

SIR: At the request of Holmes Hutchinson, in his letter of March 9th, 1850, I enclose you a copy of John Goodbee's application for lot No. 1, on the north side of Bayou Goula, and copy of a certificate of the register that he is entitled to the quantity of 160 acres.

Your ob't serv't,

R. W. BOYD,
Surveyor General La.

Filed 15th March, 1850.
(Signed) PAUL DEBLIEUX, *Clerk.*

To the Register and Receiver, &c. &c.:

I apply to become the purchaser of a tract of land situated in the parish of Iberville, principally on the north side of the Bayou Goula, designated as No. 1 by the surveyor, and is the same land which was settled by Daniel Beedlle, whose legal representative I am by purchase. I claim 160 superficial acres, and offer proof, &c.
(Signed) JOHN GOODBEE.

To the Principal D'y Surveyor S. E. district of Louisiana:
No. 8.

The applicant having proved to the satisfaction of the register and receiver for the eastern district of Louisiana that he has a pre-emption right to the land claimed, I, in consequence, certify that he is entitled to 160 acres (superficial) of land as applied for, subject to be circumscribed by the sectional or divisional lines to be hereafter run under the authority of the United States, at the price of $1 25 per acre, which he has paid.
(Signed) SAM'L H. HARPER, *Register.*
May 18th, 1822.

SURVEYOR GENERAL'S LAND OFFICE,
Donaldsonville, La., March 11th, 1850.

I certify the above to be a true copy of a document on file in this office.
(Signed) R. W. BOYD,
Surveyor General La.

Filed March 15th, 1850.
(Signed) PAUL DEBLIEUX, *Clerk.*

Minutes June 3d, 1850.

SEWALL and HUDSON
vs.
DAVID M. HUGHES. } No. 300.

Leave granted defendant to file his peremptory exceptions in this cause.

Peremptory Exceptions of Defendant.

ROBERT SEWALL and FRANKLIN A. HUDSON
vs.
DAVID M. HUGHES.

Now at this day comes David M. Hughes, now a resident of the city of New Orleans, by his attorney, and as a peremptory exception pleads that there is no cause for action stated in the petition of the above plaintiff; that the petition purports to be an action of nullity, to annul and set aside a judgment rendered in this honorable court in a petitory action wherein this respondent was plaintiff, and the above plaintiffs were defendants; and the alleged grounds of action are the alleged frauds charged by said plaintiffs against this respondent in procuring an entry and patent for the land described in said petition.

The petition is defective in not alleging that the alleged frauds were perpetrated in obtaining said judgment in said petitory. The alleged frauds are not sufficient to sustain the action of nullity.

The petition is further defective, in not showing when the alleged frauds were discovered, and that the same were not discovered before the judgment rendered in said judgment in said petitory suit.

The petition discloses the fact that the alleged equitable title of the plaintiffs were fully known to them previous to the petitory of this respondent, and that by due diligence in searching the records of the country they might have procured the same evidence in support of their title in the defence of said petitory action, if they had seen proper, that they now offer in evidence in support of their action of nullity; that the plaintiffs having neglected to defend their rights in said petitory action, it is now too late to invoke the same defences in an action of nullity to revoke said judgment, and it is now too late to plead the matters in aid of a writ of injunction might have been used in defence of said petitory action.

Wherefore respondent prays a dismissal of said suit with costs.

(Signed) J. & J. HENDERSON,
Atty's for Defendant.

Filed 3d June, 1850.
(Signed) PAUL DEBLIEUX, *Cl'k.*

Minutes June 4th, 1850.

SEWALL and HUDSON
vs.
DAVID M. HUGHES. } No. 300.

In this case it is held, that the injunction issued unadvisedly

when the court had no longer custody or cognizance of the cause, which was gone from before appeal to the Supreme Court; that the subject-matters were *are* coram non judice of original jurisdiction, but pending before the Supreme Court only capable tc transact. Whether to dispose definitely upon the original pleadings, or to remand the cause for opportunity to *amand* or reform the plaintiffs' pleadings so as to revoke his remedy, probably not that sought in the former case, nor even in this of cancelling defendant's conflicting patent, but for decree that inures to the benefit of plaintiffs' equitable resort. It is therefore ordered, adjudged, and decreed, that the injunction be dissolved, at costs of plaintiffs, but without damages, for the error of granting is thought no less an error of the court than of the party; and it is further ordered, adjudged, and decreed that the suit be dismissed with costs.

Minutes 5th June, 1850.

SEWALL and HUDSON
vs.
DAVID M. HUGHES.

Motion for new trial filed and overruled.

Motion for new Trial.

6th District Court, Parish of Iberville.

SEWALL and HUDSON
vs.
DAVID M. HUGHES.

The plaintiffs in the above entitled cause come into court and move for a new trial in the above cause, upon the ground that the judgment therein rendered is contrary to the law and evidence adduced, and for a general relief, &c.

(Signed) W. E. EDWARDS.
Z. LABAUVE,
Att'y for Pl'ffs.

Filed 5th June, 1850.
(Signed) PAUL DEBLIEUX, *Clerk.*

Order of Appeal.—Minutes, June 8th, 1850.

SEWALL and HUDSON
vs. 300.
DAVID M. HUGHES.

On motion of E. W. Edwards, of counsel for plaintiffs, it is ordered that an appeal be granted the said pl'ffs in this cause, returnable to the supreme court of the State of Louisiana on the first Monday of February, A. D. 1851, and said plaintiffs furnishing bond and security in the sum of five hundred dollars, with one or more solvent sureties.

Judgment Signed.

ROBERT SEWALL & al.
vs.
DAVID M. HUGHES. } No. 300.

In this case it is held, that the injunction issued unadvisedly when the court had no longer custody or cognizance of the cause, which was gone from before appeal to the Supreme Court; that the subject-matters were and are coram non judice of original jurisdiction, but pending before the Supreme Court, only capable to transact.

Whether to dispose definitively upon the original pleadings, or to remand the cause for opportunity to amend or reform the plaintiffs' pleadings, so as to revoke his remedy, probably not that sought in the former case, nor even in this of cancelling defendant's conflicting patent, but for decree that it inure the benefit of plaintiffs' equitable resort. It is therefore ordered, adjudged, and decreed that the injunction be dissolved, at costs of plaintiffs, but without damages, for the error of granting is thought no less an error of the court than of the party; and it is further ordered, adjudged, and decreed that the suit be dismissed with costs.

June 8th, 1850.

(Signed) J. J. BURK,
Judge Sixth Jud'l District.

Filed 4th June, 1850.

(Signed) PAUL DEBLIEUX, *Clerk.*

Appeal Bond.

STATE OF LOUISIANA,
Parish of Iberville.

Know all men by these presents, that we, Robert Sewall and Franklin Hudson, as principals, and William E. Edwards, as security, are held and firmly bound unto David M. Hughes, his executors, administrators, and assigns, in the sum of five hundred dollars, for the payment whereof we bind ourselves, our heirs, executors, and administrators and assigns, firmly by these presents. Sealed with our seals and dated in the parish of Iberville, on this 24th day of August, in the year our Lord one thousand eight hundred and fifty.

Whereas the above bounded Robert Sewall and Franklin Hudson made a motion in open court for an appeal from a final judgment rendered against them in the suit of Robert Sewall and Franklin Hudson vs. David M. Hughes, No. 300, in the 6th district court in and for the parish of Iberville, of the State of Louisiana, on the 8th day of June, 1850:

Now the condition of the above obligation is such that the above bounded Robert Sewall and Franklin Hudson shall well and truly

prosecute their said appeal, and shall satisfy whatever judgment may be rendered against them, or that the same shall be satisfied by the proceeds of the sale of their estates, real and personal, if they be cast in the appeal; otherwise, that the said W. E. Edwards, surety, shall be liable in their appeal.

(Signed) ROBERT SEWALL,
(") W. E. EDWARDS.

Filed 24th August, 1850.
(Signed) PAUL DEBLIEUX, *Clerk.*

Sixth Judicial District Court.

STATE OF LOUISIANA,
Parish of Iberville.

I, Paul Deblieux, clerk of said court, do hereby certify that the foregoing twenty-six pages contain a true and correct copy of all the proceedings had, documents on file, and testimony taken in the suit entitled Franklin Hudson and Robert Sewall vs. David M. Hughes, No. 300 on the docket of said court.

In testimony whereof I have hereunto set my hand and the seal of said court, this 26th day of November, in the year of our Lord one thousand eight hundred and fifty.
[SEAL.]

(Signed) PAUL DEBLIEUX, *Clerk.*

Opinion and Decree of Supreme Court.

Supreme Court of the State of Louisiana.

The court met Monday, February 12th, 1855. Present, their honors Thomas Slidell, chief justice; Cornelius Voorhies, A. M. Buchanan, A. N. Ogden, and H. M. Spofford, associate justices.

ROBERT SEWALL & F. A. HUDSON, App'ts,
vs.
DAVID M. HUGHES, App'lees.
No. 2,046.

Appeal from 6th Judicial District Court of Iberville.

In this cause the court this day delivered their opinion in writing in the words and figures following:

This is an episode in the protracted litigation which has grown out of the suit of Hughes vs. Sewall just decided.

It seems that in 1848, whilst the latter suit was pending on a rehearing before this court, the United States instituted a proceeding in the circuit court for the eastern district of Louisiana, in nature of a bill in chancery against Hughes, to annul the patent upon which he had obtained judgment in the district court of the parish of Iberville. The bill was dismissed in the circuit court on a demurrer, but on appeal to the Supreme Court of the United States the decree was reversed, the demurrer overruled, and a final judgment entered in favor of the United States, vacating the patent

of Hughes. The decree rendered at the December term, 1850, was afterwards, at the December term, 1853, by consent of the Attorney General of the United States, set aside, and the cause remanded to the circuit court of the eastern district of Louisiana, with leave to the defendant to answer, and for further proceedings according to equity. There the suit is still pending.

It also appears, that on the 15th March, 1849, the President of the United States issued a patent in favor of John Goodbee (under whom the present pl'ffs claim) and his heirs for the tract of land in controversy, "the outstanding patent in favor of Daniel Michael Hughes, dated the 16th day of April, 1841, to the contrary notwithstanding, the above patent to Hughes being illegal."

On the 5th of February, 1850, the plaintiffs, Sewall and Hudson, filed the present suit in the district court of the parish of Iberville.

It would be difficult to class their voluminous petition in any description of actions known to the law. It seems to partake at once of the nature of a petitory action; an action to vacate a patent; an action to annul a judgment then pending on appeal in this court; an action in damages; and an injunction sued out from a district judge requesting the supreme court not to try the appeal pending before them until the present suit should be determined.

Various exceptions were filed by the def't. They may be reduced to one head, viz: that the petition is defective, uncertain, and insufficient in the statement of the cause of action.

The exception was sustained, the injunction dissolved, and the suit dismissed.

The plaintiffs have appealed. Under no aspect can the action be maintained.

Aside from the general objection which lies to the whole petition, that it does not contain a clear and concise statement of the object of the demand and the cause of action upon which it is founded, nor end by conclusions analogous to the nature of the action to which the plaintiffs have resorted, (C. P. 172,) it will be observed that its averments do not authorize any one of the numerous remedies prayed for.

It must fail as a petitory action, because it is not directed against the possessor of the land claimed. On the contrary, the plaintiffs allege that they are and have been since 1822 in constant and uninterrupted possession themselves. C. P. 43.

As a direct action to annul the patent, even were it brought before the right tribunal, it must fail, because the complainants are in possession under a patent, and the United States, who granted both patents, were not parties to this suit, but are proceedings in their own courts against Hughes to procure a surrender of his title.

Sufficient grounds are not laid for an action of nullity against the judgment of the district court in the suit of Hughes vs. Sewall. It is not charged that that judgment was obtained through fraud,

or by producing false documents; and it is moreover apparent, from the allegations made, that all the acts of Hughes against which the plaintiffs complain were known to them more than a year before the institution of the suit. C. P. 607, 613.

No such damages are set forth as furnish a legal ground of action on that score. The injunction, which seems to have been the chief object of the suit, is its most extraordinary feature.

The district judge, who issued it under an impression that it lay within his province to supervise the proceedings of this court, upon hearing of the exceptions, rendered the following judgment:

"It is therefore ordered that the injunction be dissolved at costs of plaintiffs, but without damages, for the error of granting it is no less an error of the court than of the party."

In coming to this conclusion he certainly did not err.

It is proper to observe, that whatever rights the plaintiffs may have under the facts set forth, have been doubly guarded: first, by a reservation in the original decree of the district court in the case of Hughes vs. Sewall, which leaves the Hughes patent open to investigation in the proper form and forum; and, secondly, by the qualification annexed to that decree by the judgment of this court pronounced on appeal, which will stay its execution until the validity of Hughes's patent shall be judicially ascertained.

It is therefore ordered, adjudged, and decreed that the judgment of the court below be affirmed with costs.

UNITED STATES OF AMERICA.

Supreme Court of the State of Louisiana, for the eastern district.

I, Eugene Lasere, clerk of the supreme court of the State of Louisiana, for the eastern district, do hereby certify that the foregoing forty-nine pages contain a true copy of the transcript of the proceedings had in the sixth judicial district court of the parish of Iberville, in a certain suit wherein Robert Sewall and F. A. Hudson were plaintiffs, and David M. Hughes defendant; and also of the proceedings had in this supreme court *court* on the appeal taken by said Robert Sewall and F. A. Hudson, which appeal is now on the files thereof under No. 2,046.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court at the city of New Orleans, this 5th day of May, A. D. 1855. [SEAL.]

EUGENE LASERE, *Clerk.*

UNITED STATES OF AMERICA.

Supreme Court of the State of Louisiana, E. D.

I, Thomas Slidell, chief justice of the supreme court of the State of Louisiana, do hereby certify that Eugene Lasere is clerk of the supreme court for the eastern district; that the signature of Eugene Lasere to the within certificate is in the proper handwriting

of him, the said clerk; that the certificate is in due form of law, and that full faith and credit are due to all of his official acts as such.

In testimony whereof, I have hereunto set my hand and seal at the city of New Orleans, this 5th day of May, A. D. 1855.

[SEAL.]

(Signed) THOMAS SLIDELL.

Replication to Answer and Supplement.—Filed 6th Nov'r, 1855.

U. S. Circuit Court, 5th circuit, eastern district of Louisiana.—In chancery.

UNITED STATES
vs.
DAVID M. HUGHES et als.

The replication of the United States of America, complainants, by Thomas S. McCay, attorney thereof for said district, to the answer and supplemental answer of David M. Hughes, defendant.

These repliants, saving and reserving to themselves all and all manner of advantage or exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer and supplemental answer of said defendant, for replication thereunto saith, that they doth and will aver, maintain, and prove their said bill to be true, certain, and sufficient in the law, to be answered unto by the said defendant, and that the said answer and supplemental answer is very uncertain, evasive, and insufficient in the law to be replied unto by the repliants, without that; that any other matter or thing in the said answer and supplemental answer contained, material or effectual in the law to be replied unto, and herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things these repliants are ready to aver, maintain and prove, as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

(Signed) TOM. S. McCAY, *U. S. Att'y.*

Argument of Cause.

Minutes.—November term, A. D. 1855.

New Orleans, Tuesday, 13th November, 1855.

Court met pursuant to adjournment. Present, Hon. J. A. Campbell, presiding judge; absent, Hon. T. H. McCaleb, district judge.

UNITED STATES
vs.
DAVID M. HUGHES. No. 1,666.

Evening session, 7 o'clock p. m.

This cause was taken up for trial before his honor J. A. Camp-

bell, and after the introduction of evidence, was argued by Thos. Allen Clarke for complainants, and by Jno. Henderson, esq., for defendant, and was proceeded in until 10 o'clock p. m.; wherefore it was ordered that it be contined until to-morrow evening, at 7 o'clock.

Submission of Cause.

Minutes.—November Term, A. D. 1855.

New Orleans, Wednesday, 14th November, 1855.

Court met pursuant to adjournment. Present, Hon. J. A. Campbell, presiding judge; absent, Hon. T. H. McCaleb, dist. judge.

UNITED STATES vs. D. M. HUGHES. } No. 1,666.

T. A. Clarke, esq., closed his argument in this case, and thereupon it was submitted to the court.

Deposition of Joseph D. Hamilton, offered by Complainants. No. 1.—Filed 30th May, 1855, and opened in open court 9th Nov'r, 1855.

UNITED STATES OF AMERICA,
Eastern District of Louisiana, city of New Orleans, ss.

Be it remembered, that on this twenty-third day of February, in the year of our Lord one thousand eight hundred and fifty-five, before me, William H. Hunt, a commissioner duly appointed by the circuit court of the United States, in and for the fifth circuit and eastern district of Louisiana, under and by virtue of the act of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,' passed March 1st, 1817," and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, personally appeared Joseph D. Hamilton, a person of sound mind and lawful age, witness for the complainants in a civil suit now depending in the circuit court of the United States, in and for the 5th circuit and eastern district of Louisiana, wherein the United States are complainants, and David M. Hughes and others defendants; and the said Joseph D. Hamilton being by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, did depose and say, in answer to the interrogatories and cross-interrogatories to him hereinafter propounded, and which are hereto annexed—

Circuit Court of United States, 5th circuit, eastern district of Louisiana.—In chancery.

UNITED STATES
vs.
DAVID M. HUGHES et als.

Interrogatories to be propounded to Joseph D. Hamilton, a witness on behalf of complainants, to be called, sworn and examined in the above entitled cause.

1st. What is your name, age, and occupation or profession? Where do you reside? How long have you there resided?

2d. Are you acquainted with the region of country along the Bayou Goula? If yea, how long have you been familiar therewith? Were you acquainted with one Daniel Budle or Bidelle? Had he a settlement on said bayou? If yea, when and where did he settle? How long did he there remain? Has the same land been since occupied or cultivated? If yea, by whom and in what manner?

3d. Do you know anything of the tract of land on the north side of Bayou Goula, designated as lot number one, or section 54, in township 10, (west of Mississippi,) of range 12 east? If yea, is the same now occupied or cultivated, or not? If it is, by whom, and how long has it been so cultivated or occupied, and in what manner? Are there any buildings or not erected on the same? If yea, when were they erected and by whom? Is or not any portion cultivated? If yea, what and how; how long has it been cultivated and by whom? How long has said lot or section been occupied or cultivated, and by whom? Have there or not been buildings erected upon the same? If yea, when, what and by whom? Please to state all you know about the said lot or section in reference to its occupation, settlement or cultivation, and by whom, and during what time.

4th. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause or either of them, or that may be material to the subject of this your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

(Signed) E. WARREN MOÏSE,
U. S. Attorney.

It is agreed that the testimony of Joseph D. Hamilton may be taken, upon the foregoing interrogatories and the following cross-interrogatories, before any United States commissioner, without a commission issuing therefor, and any notice as to time and place of taking same, and his return of said testimony to avail as if taken under a commission regularly issued.

(Signed) E. WARREN MOÏSE,
U. S. Attorney.

I consent to the above—my cross-interrogatories herewith filed be answered at the same time.

Feb'y 16th, 1855.

(Signed) JOHN HENDERSON,
Att'y for Hughes.

Cross-interrogatories.

UNITED STATES
vs.
DAVID M. HUGHES et als.

Cross-interrogatories to witness Hamilton.

If you answer that you knew the man Beedle or Bidell, and that he was settled on the Bayou Goula, then please state on which side, the north or south, and had he any improvements on said land, and in what did they consist; how many acres were in cultivation, and in what cultivated, and on which side of the bayou?

2d. When did said Bidble or Beedle settle there, and how long live there, and did he die there or move away, and at what time did he so die or move? Be particular as to the time.

3d. When said Beedle or Bidle left said premises by death or removal, who next took or obtained the possession; and did the person next claiming or taking possession after Beedle or Bidle live on the land and occupy by actual habitation and cultivation? And if so, describe how.

4th. Was Beedle or Bedle a man of family, and did he occupy the land inquired about with his family, and did the person who next succeeded to the claim after Beedle or Bidle occupy with a family?

5th. Did or did not Beedle or Bidle claim a pre-emption on said land, and did he ever present his claim?

6th. Did or did not said Bidle or Beedle occupy as a squatter on public land, and did he abandon his said occupancy as a squatter, and move away, or did he sell out his squatter's possession, and to whom?

7th. Did you ever know one John Goodbee, living in that neighborhood; and if yea, when did he come there, how long remain, where did he live while there, where did he go when leaving, and when did he leave?

8th. Is Goodbee living or dead? and if dead, please state nearly as possible the time—at least the year—he died.

9th. Did he ever claim the same land Beedle or Bidle previously occupied; and if yea, by what right?

10th. Was the land surveyed on which Bidle or Beedle lived by the United States, when or before Beedle lived on it?

11th. Do you know when the land Bedle or Bidle settled on was surveyed, and do you know its number or description?

12th. When the land was surveyed by the U. States, did they lay off the same lots to cross the bayou, or did they front the lots on the bayou, on each side?

13th. If you answer said land has been long in cultivation, state if you know by what right or title the persons so cultivating it did so use it.

(Signed) JOHN HENDERSON,
Att'y for Def't Hughes.

Deposition of Joseph D. Hamilton.—Answers annexed to Deposition.

Circuit Court of the United States, 5th circuit, eastern district of Louisiana.

THE UNITED STATES
vs.
DAVID M. HUGHES and al.

Deposition of Joseph D. Hamilton, a witness in behalf of complainants in the above entitled cause, who having been duly sworn, deposes and says as follows, to the interrogatories to him propounded:

1st. To the first interrogatory, he answers: My name is Joseph D. Hamilton; sixty years of age I am; I am a farmer; I reside in the parish of Iberville, and have been residing there sixty years; I now reside on Bayou Goula, in said parish.

2d. To the 2d interrogatory, he answers: I am acquainted with the region of country along Bayou Goula; I have known it since 1804, and I have been familiar with it since 1814. I was acquainted with Dan'l Biddle, (or Biddell, as the French called him.) He had a settlement on said bayou. He first settled on the south side of Bayou Goula, some time in 1808 or 1809; I can't precisely say. He removed in 1812 or 1813, or thereabouts, to the north side, to what was then designated as lot No. one. His first settlement was on the back concession of the river land. This reason for moving was, that he was on that concession and interfered with the front proprietors, who ordered him off. After he removed to lot No. one, in consequence of some difficulty with his wife, she removed across the bayou to lot No. one, south side, and he remained on the north side, where he remained until he sold his pre-emption right to John Goodbee, some time about 1820. Biddle cultivated the land until he sold it; ever since then the land has been both occupied and cultivated. Biddle raised corn and potatoes at first, and then got up a turning-lathe, where he made wheels and chairs, &c. He built both a dwelling-house and a shop, and other out-houses. When John Goodbee took it he raised cotton and corn on the land. He built a corn-house on it.

He remained there some two or three years, and then sold it to Reuben Bush. Bush cultivated it for cotton and corn, and staid there a year or more. Bush sold to Robert Lloyd. Silas F. Hudson cultivated it for Lloyd, and afterwards bought a half and then the whole of it. Hudson remained there continuing to cultivate it up to his death. His remains are there now in the family vault; his family always was there with him. Before his death he sold the half to Wm. M. Lambeth, but continued to cultivate it for both. After his death, Lambeth, as tutor of the minor, Franklin Hudson, cultivated it through an overseer until he sold his half interest to Robert Sewall, in 1840. Sewall removed to the place, and about a year or so afterwards got married and continued there until the end of the year 1850, when he died. Hudson built a large dwelling-house on the lot No. one, and some kitchens and stone houses. He cultivated it first in cotton and then in sugar. He occupied the dwelling with his family. The dwelling was then occupied by Sewall and his family, and since his death by Franklin Hudson and the widow Sewall. Franklin Hudson has been living there up to the present time.

3d. To the 3d int'y he answers: The lot No. one inquired about is the same spoken of in my previous answer, and it has been occupied and cultivated in the manner already stated. The occupancy and cultivation as stated were notorious in the parish. The settlement is one of the oldest on the bayou. I recollect having gone there hunting previous to 1809, when a boy, and also having eaten at Biddle's house, on the north side, in 1814, with some of his boys.

4th. I know nothing except that the lands on the Bayou Goula were surveyed by Mr. Gilmore about 1809. The survey was of lots along the bayou, commencing with No. 1 and running to No. 14; the lots were so numbered on the north side, and the lots on the south side had corresponding numbers. In 1836 I went to the land office with Silas F. Hudson, with a view to obtain the back concessions of the lands on Bayou Goula. Hudson and his partner owned lots Nos. one and two; I owned lot No. 3. Mr. Canonge required us to produce our certificates of payment for our lands on the bayou and our surveys before he would give us certificates to enter the back concessions. Both I and Hudson did produce these certificates obtained from the land office at Donaldsonville, of the original survey by Gilmore.

(Signed) JOSEPH D. HAMILTON.

Sworn to and subscribed before me.

WILLIAM H. HUNT,
U. S. Com'r.

And in answer to the cross-interrogatories to him propounded, the said witness deposes and says:

1st. To the 1st cross-interrogatory, he answers: I have already stated in my answers to the second interrogatory in chief all that is here inquired of. The cultivation was wholly on the north side of the bayou. The number of acres cultivated I cannot state.

2d. To the 2d cross-int'y, he answers: I have already answered this interrogatory in my answer to the 2d interrogatory in chief. Biddle did not die there, but moved from lot No. one to No. two, where he remained a month or so, and then went over to Grand river, as it is called. I cannot precisely say at what time this was; it was about 1820 or 1821, I think; I know it was just after John Goodbee moved into the house.

3d. To the 3d cross-int'y, he answers: John Goodbee took possession of the land after Biddle; he occupied it and cultivated it personally and with his negroes.

4th. To the 4th cross-int'y, he answers: Biddle was a man of family. He and his family at first occupied the lands. Some time afterwards, he and his wife had a difficulty, and she removed across the bayou, he remaining on the north side, on No. one. Goodbee had no family at the time he occupied it.

To the 5th cross-int'y, he answers: Biddle did claim a pre-emption right to said land. He sold it to Goodbee. I cannot say whether Biddle ever presented it.

6th. To the 6th cross-int'y, he answers: Biddle did occupy public land and cultivate it as already stated. He sold to Goodbee, as stated, who came in immediately after him.

7th. To the 7th cross-int'y, he says: As I have already stated, I did know John Goodbee; he was a step-brother of mine. He did come to the lot No. one, section 54, township 10, range 12 east, about 1820, and remained and lived there until he sold to Reuben Bush, about 2 years afterwards. When he left there he went to Covington, and remained there about a year, and married, and then came back and staid at his father's.

8th. To the cross-int'y, he says: I think Goodbee is now living; I saw him about a year ago.

9th. To the 9th cross-int'y, he answers: He did claim the land occupied by Biddle. He obtained it by purchasing the pre-emption right from Biddle.

10th. To the 10th cross-int'y, he answers: The land was surveyed by the U. States about 1809.

11th. To the 11th cross-int'y, he answers: The land occupied by Biddle was surveyed in 1809, as number one on the north side of Bayou Goula.

12th. To the 12th cross-int'y, he answers: When the lands *was* surveyed by the U. States, they did front them on the bayou and did not extend them across.

13th. To the 13th cross-int'y, he answers: I have already fully answered this question. Biddle claimed as pre-emptioner; Good-

bee, by purchase of his right, and by entry of the settlement-right, for which he paid the government. The subsequent occupants claim under that.

(Signed) JOSEPH D. HAMILTON.

Examination taken, reduced to writing, and by the witnesses subscribed and sworn, before me, at New Orleans, 23d day February, 1855.

(Signed) WILLIAM H. HUNT,
U. S. Commissioner.

Deposition of Joseph D. Hamilton.—Certificate of Commissioner.

UNITED STATES OF AMERICA.

Fifth Circuit and eastern district of Louisiana, City of New Orleans, *ss.*

I, William H. Hunt, commissioner, duly appointed as aforesaid, do hereby certify, that the reason for taking the foregoing deposition is, and the fact is, that the parties have agreed that the same should be taken, as appears from said agreement hereto affixed, and the said witness lived more than two miles distant from New Orleans, the place of trial of the cause, for and in which said deposition was taken, and is necessary. I further certify that no notification was made out, and served on the def'ts or adverse party, their agent or attorney, to be present at the taking of the deposition, and to put interrogatories, if he or they should think fit, and that no notification of the time and place of taking the said deposition was made out and served on said def'ts, or adverse parties, although the attorney or agent of said adverse party was at the time of taking said deposition within (100) one hundred miles of the said city of New Orleans, the place of taking the said deposition.

I further certify, that on this 23d day of February, A. D. 1855, I was attended by said Joseph D. Hamilton, the witness, who was of sound mind and lawful age, and the said witness was by me carefully examined and cautioned, and sworn to testify the whole truth, and the deposition hereinbefore appearing was by me reduced to writing in the presence of the witness, and after carefully reading the same to the witness, he subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of sealing up, directing, and forwarding the same with my own hand to the court for which the same was taken.

I further certify, that I am not of counsel or attorney to any of the parties in said deposition and caption named, or in any way interested in the event of the said civil cause named in the caption.

for cancellation. And the said defendant is hereby perpetually enjoined from setting up any claim to said land by virtue of the said entry or patent. It is further ordered that the said defendant pay the costs of this suit.

Decree rendered 22d March, 1856.

(Signed) J. A. CAMPBELL,
Asso. Justice Sup. Court U. S.

Petition for Appeal.—Filed 8th June, 1858.

In the Circuit Court of the United States for the eastern district of the State of Louisiana, (sitting in equity.)

UNITED STATES.
vs.
D. M. HUGHES et al.

To the Hon. the Judges of the Circuit Court of the United States for the eastern district of the State of Louisiana:

The petition of David M. Hughes respectfully shows, that a final decree was rendered against him in the above entitled suit, and that he believes there is manifest error to his prejudice in said decree; wherefore petitioner prays that this hon'ble court will grant him an appeal, returnable to the Supreme Court of the United States, from said final decree rendered the 22d day of March, A. D. 1856.

Petitioner prays that the United States, through the district attorney and others to said decree, be cited to answer the case upon appeal. Petitioner prays general relief.

JNO. HENDERSON,
Sol. for Petitioner.

Order allowing Appeal.

Minutes.—New Orleans, Tuesday, 8th June, 1858.

Court met pursuant to adjournment. Present, Hon. J. A. Campbell, presiding judge; *present*, Hon. Theo. H. McCaleb, district judge.

THE UNITED STATES
vs. 1,666.
D. M. HUGHES & al.

On motion of Jno. Henderson, esq., of counsel for defendant, and in presenting to the court the petition of the said defendant, D. M. Hughes, representing that he is aggrieved by the decree rendered against him herein on the day of , and praying an appeal therefrom to the next term of the Supreme Court of the United States, it is ordered that an appeal be allowed as prayed for on said defendant giving bond, with good and solvent surety thereon, in the penal sum of five hundred dollars, and conditioned according to law.

Appeal Bond.—Filed 8th June, 1858.

Know all men by these presents that we, David Michael Hughes, as principal, and William R. White, as surety, are held and firmly bound jointly and severally unto the United States of America, Franklin A. Hudson, and Mary Evalina Hebert, widow of Rob't Sewall, dec'd, and natural tutrix of the minors Robert Henry, Nicholas Hebert, Leonora and Laura Evelina Sewall, children of the said Rob't Sewall by his said wife, Mary Evalina Hebert, in the sum of five hundred dollars ($500,) lawful money of the United States of America, to be paid to the said United States, and others above named, their heirs, executors, administrators, and assigns, for which payment well and truly to be made we bind ourselves, and each of us by himself, and each of our heirs, executors and administrators, firmly by these presents. Sealed with our seals, and dated the eighth day of June, in the year of our Lord eighteen hundred and fifty-eight, (1858.)

Whereas David Michael Hughes has this day presented a petition to the honorable the circuit court of the United States for the 5th circuit, holding session in and for the eastern district of Louisiana, praying an appeal from the decree herein rendered against him in the case of the United States vs. D. M. Hughes et al., No. 1,666 of the docket, on the 22d day of March, 1856, which said appeal has been allowed by the court: Now the condition of the above obligation is, that we, the above bounden David M. Hughes and Wm. R. White, will well and truly pay to the said United States of America and others above named, the defendants in said appeal, all such damages and costs as they may recover against us.

WM. R. WHITE. [SEAL.]

Signed, sealed, and delivered in the presence of—

STATE OF LOUISIANA,
Parish of Orleans.

Personally appeared before me the undersigned, Wm. R. White, who being first duly sworn, *and* says that he is worth five hundred dollars, the amount of the within bond, over and above all his debts and liabilities.

WM. R. WHITE.

Sworn to and subscribed before me, this fifth (5th) day of June, 1858.

J. W. GURLEY,
Cl'k of U. S. Circuit Court East. Dist. of La.
By A. LAVISSON, *D'y Cl'k.*

Circuit Court of the United States, fifth circuit and eastern district of Louisiana.

CLERK'S OFFICE.

I certify that the foregoing two hundred and forty pages contain

and form a full, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced, in the case of the United States vs. David Michael Hughes et al., No. 1,666 of the docket of this court.

New Orleans, 23d August, 1858.

Attest: J. W. GURLEY, [L. S.]
Clerk.

Citation in Appeal.

THE UNITED STATES OF AMERICA.

The President of the United States to the United States of America, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the first Monday of December next, pursuant to a petition and order of appeal filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, wherein David M. Hughes is appellant, and you are appellee, to show cause, if any there be, why the judgment rendered against the said appellant, as in said petition mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, this 22d day of June, in the year of our Lord one thousand eight hundred and fifty-eight.

THEO. H. McCALEB, *U. S. Judge.*

Marshal's Return.

Rec'd June 22d, 1858; and on the same day served copy of the within citation in appeal on the United States, by handing the same to Thos. J. Semmes, U. S. att'y, and on the 23d day of June returning this writ into court.

JAMES GILLAN,
D'y U. S. M.

Citation in Appeal.

THE UNITED STATES OF AMERICA.

The President of the United States to Mary Evalina Hebert, widow of Rob't Sewall, dec'd, and tutrix of her minor children, Robert, Henry, Nicholas Hebert, Leonora and Laura Evalina Sewall, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, on the first Monday of December next, pursuant to a petition and order of appeal filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, wherein David M. Hughes is appellant, and you are appellees, to show cause, if any there be, why the judgment ren-

dered against the said appellant, as in said petition mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, this 22 day of June, in the year of our Lord one thousand eight hundred and fifty-eight.

THEO. H. McCALEB,
U. S. Judge.

Marshal's Return.

Rec'd June 22d, 1858; and on the same day served copy of the within citation in appeal on Mary E. Hebert, by handing the same to T. L. Bayne, one of the firm of Clark & Bayne, att'ys of record of said widow Mary E. Hebert, in person, in the city of New Orleans, and on the 23d day of June, 1858, I returned this writ into court.

JAMES GILLAN,
D'y U. S. M.

Citation in Appeal.

THE UNITED STATES OF AMERICA.

The President of the United States to Franklin A. Hudson, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the first Monday of December next, pursuant to a petition and order of appeal filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, wherein David M. Hughes is appellant, and you are appellee, to show cause, if any there be, why the judgment rendered against the said appellant, as in said petition mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, this 22 day of June, in the year of our Lord one thousand eight hundred and fifty-eight.

THEO. H. McCALEB,
U. S. Judge.

Marshal's Return.

Rec'd June 22d, 1858; and on the same day served copy of the within citation in appeal on F. A. Hudson, by handing the same to T. L. Bayne, one of said firm of Clark & Bayne, att'ys of record of said F. A. Hudson, in person, in the city of New Orleans, and on the 23d day of June, 1858, returned this writ into court.

JAMES GILLAN,
D'y U. S. M.

Filed 5th February, 1859.

SUPREME COURT OF THE UNITED STATES.

DAVID M. HUGHES, appellant, *vs.* THE UNITED STATES. } Appeal from the circuit court for the eastern district of Louisiana, No. 11.

Argument for defendant in error.

This is an appeal from the circuit court for the eastern district of Louisiana.

The bill was filed on behalf of the United States, against Hughes and Robert Sewall and Franklin Hudson, to vacate a patent issued to Hughes, April 16, 1841, for section 54, T. 10, R. 12 E., in Iberville, Louisiana, on the ground that the same land had been duly pre-empted and sold to John Goodbee, Feb. 22, 1822, under the description of lot No. 1 on the north side of the Bayou Goula, which land was then possessed and claimed by said Sewall and Hudson under such sale to Goodbee.

The land was designated by different numbers in consequence of having been surveyed at different times under two different systems of survey. The old French and Spanish method of dividing the lands in Louisiana was to front as many lots upon the watercourses as possible. Hence lots had narrow fronts and great depth. The second section of the act of March 3, 1811, (2 *Statutes at Large*, 602,) authorized a continuance of this system, by directing the surveyor of lands "which are adjacent to any river, lake, creek, bayou or watercourse, to vary the mode heretofore prescribed by law, so far as relates to the contents of the tracts and to the angles and boundary lines, and to lay out the same into tracts, as far as practicable, of 58 poles in front and 465 poles in depth, of such shape and bounded by such lines as the nature of the country will render practicable and most convenient." The lands to be surveyed were to be connected with the general survey when completed, and be designated by ranges, townships, and sections, according to the general system.

The lands on both sides of the Bayou Goula were surveyed under this act at an early day, in which survey the lot in question was designated No. 1, on the north side of the Bayou Goula. Under this survey the lands were open to settlement and pre-emption and sale, and were offered for sale under the President's proclamation.

After the survey, one Daniel Beddle settled on a part of the lands on the south side of the Bayou Goula; but in 1813 he removed to lot No. 1, north side, which he occupied and improved until about 1820, when he sold his settlement claim to John Goodbee, who went into possession. On or before the 22d February, 1822, Goodbee gave to the register and receiver of the land office at New Orleans notice of his right to pre-empt said lot No. 1, as follows:

"*To the register and receiver of eastern district of Louisiana:*

"GENTLEMEN: I apply to become the purchaser of a tract of land by virtue of settlement under the act of Congress of the 12th of April, 1814, situate as follows: in the parish of Iberville, principally on the north side of the Bayou Goula, designated as lot No. 1 by the surveyor, and is the same land which was inhabited and cultivated by Daniel Beedle, or Bidell, in the year 1813, under which settlement I claim by purchase.

"This land belongs to the United States, and is not rightfully claimed by any other person; neither has said Biddle removed from the State. The land claimed has not been surveyed according to law, but I apply for the right of pre-emption to 160 superficial acres, at the price provided by law, and offer proof of the facts set forth.

("Signed) JOHN GOODBEE."

Goodbee furnished his proofs, and thereupon the receiver issued to him the following certificate:

"No. 8.—The applicant having proved to the satisfaction of the register and receiver for the eastern district of Louisiana that he has a pre-emption right to the land claimed, I, in consequence, certify that he is entitled to 160 superficial acres of land as applied for, subject, however, to the sectional or divisional lines to be hereafter run under the authority of the United States, February 22d, 1822.

("Signed) SAM'L H. HARPER, *Register.*"

Goodbee paid the price of the 160 acres, and received the following receipt:

"RECEIVER'S OFFICE, NEW ORLEANS,
"*February* 26, 1822.

"No. 5.—Received of John Goodbee two hundred dollars, being the purchase money for 160 superficial acres of land in the parish of Iberville (designated No. 1 by the surveyor) to which he has a pre-emption right according to the certificate of the register No. 8, exhibited to me. 160 acres, at $1 25—$200.

("Signed) J. J. McLANAHAN."

Goodbee and his grantees have continued in the possession of lot No. 1 from the entry up to the present time, and have permanently improved the land and rendered it of great value.

The President, by proclamation of Aug. 11, 1823, ordered the public sale of the lands in this district. All the lands on the Bayou Goula so surveyed, (though none had then been surveyed under the general system,) whether pre-empted or reserved for schools, were included in the proclamation, and were registered for sale in the order of the proclamation; but those which had been pre-empted were marked "sold" in the register by the register. Lot No. 1, in question, was so marked by him. And the lots reserved for schools were marked "reserved for schools" in the register. And at the

sale no offer was made to sell lot No. 1, nor any other of the lots so marked "sold" or "reserved for schools." Lot No. 2, on the south side, though pre-empted by *James* Goodbee, was omitted to be so marked "sold," and it was sold at vendue, but the sale was "annulled, the land having been formerly sold as a settlement right to Goodbee," an entry in these words being made in the sale-book under the entry of sale.

After the word "sold," in the register, against lot No. 1, is written in pencil "Hudson" by the register's clerk in 1836.

Dec. 14, 1830, the survey of these lands under the general system was completed, and the two systems connected, and Dec. 8, 1831, the field-notes and maps were approved. In this last survey lot No. 1 is designated S. 54, in To. 10, R. 12 E., and stated to contain $175\frac{46}{100}$ acres.

May 12, 1836, Hughes entered at private sale lot No. 1 under the new description of S. 54, &c., (the officers of the land office not noticing that it was the same land sold to Goodbee in 1822,) he paying the minimum price therefor, amounting to $219 32; and April 16, 1841, the patent in question issued to him.

Afterwards Hughes brought suit in the State courts to obtain possession against Robert Sewall, who was then in the occupation of the land, and a part owner with Franklin Hudson under the sale to Goodbee. Judgment was given in favor of Hughes, on the ground that the court could not, in that action, look behind the patent to inquire into the equities. This judgment was affirmed by the supreme court of the State; afterwards a rehearing was had, when the former judgment was reaffirmed, but with a stay of execution until the determination of this suit in Hughes's favor.

April 3, 1846, Goodbee (or his assigns in his name) paid to the receiver $19 32, making, with the $200 paid Feb. 22, 1822, the price of lot No. 1, or S. 54; and May 15, 1849, a patent issued to him for the land, in which was recited the doings in reference to Hughes's patent, and declaring it illegal. Feb. 5, 1850, Sewall and Hudson filed a petition before the local courts of Louisiana setting forth the facts substantially as hereinbefore stated, together with their title, and asking relief on various grounds. Their petition was dismissed because it was "defective, uncertain, and insufficient." This was sustained by the supreme court of the State on appeal, and in reference to the vacating the patent to Hughes the court disclaimed jurisdiction; but if it had, then that United States should be a party.

The bill in this cause was filed by the district attorney of the United States at New Orleans, January 20, 1848, against Hughes and the said Robert Sewall and Franklin Hudson, a minor, represented by Holmes Hutchinson, his tutor, in which is set out the facts in reference to the claim of Goodbee to pre-empt the land, and his payment and entry substantially as already stated, and also the facts as stated in relation to the surveys, and then avers that by reason of these acts and doings no part of said land was thereafter

susceptible of being sold by the United States to any other person, nor liable to be entered by any other person than said Goodbee.

The bill further sets out the facts stated with reference to the entry and patent to Hughes, and charges that at the time of such entry and of procuring said patent Hughes had full knowledge of all the facts, and that he falsely represented the land as liable to private entry, &c.; that the entry and patent to Hughes are void, and that he is bound in equity to restore such patent; and that, before the filing of the bill, Hughes was requested to give up said patent to the Commissioner of the Land Office, and to receive back the purchase price, but that he refused to do so, and insists on holding on to the same.

Exhibit A is an abstract of lands entered at the land office at New Orleans as settlement rights in virtue of the 5th section of the act of April 12, 1814. The entry shows that lot No. 1, (in red ink,) or sec. 54, Bayou Goula, north side, (sec. 54, T. 10, R. 12 E,) was entered and paid for Feb. 22, 1822, by John Goodbee.

Exhibit B is a similar extract from the receiver's office, but not describing the land.

Exhibit C is a letter from the register at New Orleans to the Commissioner of the Land Office at Washington, dated Feb'y 23, 1846, reporting the facts of the case to the department, which states the registry of the land, and that the entries opposite to lot No. 1 of "sold" and "Hudson," in such register, were as mentioned, and adds, "although thus registered under the President's proclamation, no doubt the tract had already been disposed of, as the word "sold" indicated, and that it is the same lot designated in Goodbee's application, as may be traced in township plat 10, R. 12 E., as sec. 54, sold Hughes 14th May, 1836, the number of said section being No. 1 on the original plat, and is still retained in red ink on the plat by which Hughes was permitted to enter."

Exhibit D is certificate of register and receiver for $19 32 from Goodbee, and that he had entered the whole of lot No. 1, or section 54, &c.

Exhibit E is the patent to Hughes conveying to him sec. 54, &c.

Sewall and Hudson, by his tutor, Holmes Hutchinson, answered the bill, admitting the facts alleged, and setting out their title.

Exhibit No. 1 is the application of Goodbee to pre-empt, already set out.

Exhibit No. 3 is the register's certificate to Goodbee, of Feb. 22, 1822, already set out; also the proofs of his right to pre-empt.

Exhibit No. 4 is the receiver's receipt to Goodbee, Feb. 26, 1822, already set out, and also a letter from the Commissioner of the Land Office, dated Sept. 23, 1846, in which he states the facts of the entry of Goodbee, and says, "which tract could not then be better described, because the connexions of the public surveys embracing the land had not then been made and returned to the Land Office." He also adds: "The entry" (of Goodbee) "was made in accordance with the practice in such cases, and was regular and legal in all respects." Subsequently proper returns of surveys were

made, in which the land was fully described and designated as lot No. 1 on the north side of Bayou Goula, or section 54, in township 10, (west of the Mississippi,) of range 12 east; and therefrom it appears that the land officers permitted, on the 14th of May, 1836, one David Michael Hughes to enter the same land as if it were a tract of public land, when it had been entered more than 14 years previously by Goodbee. The fact that Hughes's entry was for Goodbee's land was not brought to the attention of this office, and the error of the land officers in permitting the entry was carried into patent, which issued to Hughes 16th April, 1841. On ascertaining the illegality of the transaction with Hughes, he was called on to surrender the patent which had issued in his favor for Goodbee's lands.

Hughes demurred to the bill, and the circuit court sustained the demurrer; but its decision was reversed by this court on appeal, and a final decree was made in favor of the United States, vacating the patent to Hughes. (11 *Howard*, 552; *The United States vs. Hughes.*) Afterwards the decree was vacated by consent of the then Attorney General.

Thereupon Hughes filed his answer, (March 23, 1854.) He admits, directly and indirectly, all the material facts alleged in the bill, but denies that the contents of the land were found to be $175\frac{46}{100}$ acres by the final survey, but that the land was surveyed and subject to be computed as now surveyed and computed before the pre-emption by Goodbee. He denies also that the doings, acts, and proofs of Goodbee gave him the right to enter the land, and also that the land officers had no right to receive payment of the price of the surplus acres from Goodbee, and protests against the jurisdiction of the court to try any matter of interest in this case between him and Sewall and Hudson, being all citizens of Louisiana. And he denies all personal knowledge of the rights of Goodbee and his assigns, or that the land had been sold, and also all fraud, and insists that holding the legal title he claims the protection of the law.

February 23, 1855, the district attorney filed a supplemental bill, setting out the death of Robert Sewall, one of the defendants, and that his widow and heirs survived him, and asking that they be made parties.

Hudson answered, and set out the facts as stated, with the further fact that after the decision of this court upon the demurrer, and before the vacating of the decree on the 21st April, 1853, he purchased of the representatives of Sewall the entire interest of said Sewall in said lot.

Exhibit No. 1 are the articles of sale and purchase.

Exhibit No. 2 is an abstract from register of lands belonging to the United States, in the order of the President's proclamation of Aug. 11, 1823, in which this lot is marked "sold," "Hudson."

Exhibit No. 4 is an extract from the book of auction sales under the proclamation of Aug. 11, 1823. This shows that lot No. 1 was not offered for sale, but that the sale of the lands on the bayou commenced with No. 2, north side, and run down to No. 14, and then on the opposite or south side in the same manner, omitting to offer any for sale that were marked "sold," or "reserved for schools."

Lot No. 2, on the south side, although it had been pre-empted, was omitted to be so marked, and was sold at auction. But under the entry of such sale is this entry: "This purchase annulled, the land having been previously sold as a settlement right to Goodbee."

Exhibit No. 8 is an opinion of Attorney General Toucey, that a patent, issued under the same circumstances as that of Hughes, was void.

Exhibit No. 9 is the patent to Goodbee, dated March 15, 1849, and conveys to John Goodbee and his heirs the said lot No. 1, or sec. 54, T. 10, R. 12 E, containing $175\frac{46}{100}$ acres, entered by him Feb. 22, 1822, "the outstanding patent in favor of Hughes, dated 16 April, 1841, to the contrary notwithstanding, the above patent to Hughes being illegal."

Exhibit No. 10 are the field-notes of section 54, &c., dated Dec. 14, 1830, and approved Dec. 8, 1831.

April 12, 1855, Hughes filed a supplemental answer, setting up the recovery of the two judgments in his favor, and pleading the last one in bar of this suit. The record of which shows that it was a petitory action by Sewall and Hudson against Hughes, already mentioned, as filed Feb. 5, 1850, in which various grounds of relief are set up. The case was dismissed by the inferior court, and its decision affirmed by the supreme court on appeal. In its decision, the latter court say: "Various exceptions were filed by the defendant. They may be reduced to one head, viz: that the petition is defective, uncertain, and insufficient in the statement of the cause of action."

"As a direct action to annul the patent, even were it brought before the right tribunal, it must fail, because the complainants are in possession under a patent, and the United States, who granted both patents, were not parties to this suit, but are proceeding in their own courts against Hughes to procure a surrender of his title."

"It is proper to observe, that whatever rights the plaintiffs may have, under the facts set forth, have been duly guarded; first, by a reservation in the original decree of the district court in the case of Hughes *vs.* Sewall, which leaves the Hughes's patent open to investigation in the proper form and forum; and, secondly, by the qualification annexed to that decree by the judgment of this court pronounced on appeal, which will stay its execution until the validity of Hughes's patent shall be judicially ascertained."

The United States took the testimony of Joseph D. Hamilton, who testified, in substance, that he resided in Iberville for sixty years, and had known the Bayou Goula region since 1804, and been familiar with it since 1814, and was acquainted with Daniel Beddle, or Bidell, as the French called him. He settled on the bayou in 1808 or 1809, and moved, in 1812 or 1813, on the lot then designated as No. 1, where he resided until he sold out his pre-emption to Goodbee, about 1820. Biddle cultivated the land until he sold it. Ever since then the land has been both occupied and cultivated. He built a dwelling-house and shop and other outhouses. When Goodbee took it he raised cotton and corn. He built a corn-house on it, and remained in possession two or three years, and then sold to Reuben Bush.

Bush cultivated for cotton and corn, and stayed a year or more, and sold to Robert Lloyd. Silas F. Hudson cultivated it for Lloyd. and afterwards bought a half and then the whole, and remained there and cultivated it up to his death. His remains are there now in the family vault. His family were always there with him. Before his death he sold half to W. M. Lambeth, but continued to cultivate for both. After his death, Lambeth, as tutor for Franklin Hudson, cultivated it through an overseer, until he sold his half to Robert Sewall, in 1840. Sewall removed to the place, got married, and continued there until 1850, when he died. Hudson built a large dwelling-house on lot No. 1, and some kitchens and storehouses. He cultivated at first cotton and then sugar. He occupied the dwelling-house with his family. The dwelling was then occupied by Sewall and his family, and since his death by Franklin Hudson and the widow Sewall. Franklin Hudson has been living there to the present time. The occupation and cultivation, as stated, was notorious in the parish. The settlement is one of the oldest on the bayou. The land was surveyed by Mr. Gillmore into lots along the bayou, and numbered from 1 to 14 on the north side, and the same on the south side.

To cross-interrogatories on behalf of the defendant, Hughes, he said the cultivation was wholly on the north side; the number of acres cultivated he could not state. Biddle removed from No. 1 to No. 2, and then went to Grand River in 1820 or 1821, the year after Goodbee moved into the house. Goodbee took possession after Biddle, and occupied and cultivated it personally with his negroes. Biddle was a man of family. He and his family first occupied the land. He and his wife afterwards had a difficulty, and she removed across the bayou, he remaining on No. 1. Goodbee had no family at the time he occupied it. Biddle did claim a pre-emption right to the land; cannot say whether he ever presented it. Goodbee was a step-brother of the witness. When he left the lot he went to Covington, and remained there about a year, and married. I think he is now living. I saw him about a year ago. He claimed the land occupied by Biddle.

The cause was heard on the pleadings and proofs.

The circuit court, after argument, held that the bill described both titles correctly, and that the judgment upon the demurrer was conclusive upon the subject. That the proofs established a very long, continual occupation of the land, and that improvements of a permanent and valuable character had been erected by the representatives of the pre-emption claimant upon it, and consequently that the equity of the bill was sustained. And that the judgment pleaded in bar did not estop the United States from maintaining this suit, and that they were entitled to the relief prayed for.

From which decision the defendant, Hughes, brings this appeal.

APPELLEE'S POINTS.

1. The judgment in the petitory action between Sewall and Hudson against Hughes is no bar to this suit, and does not estop the United States from claiming the relief sought by the bill in this cause.

A judgment, to be a bar to a second suit, must be between the same parties, or between those through whom the parties to the second suit claim title, and have been rendered by a court of competent jurisdiction, and the point in controversy must be the same in both cases. If the suit was dismissed for want of jurisdiction in the court, or through defectiveness in the pleadings, or for want of proper parties, or for any cause other than upon the merits, then there is no bar. (1 Greenl. Ev., § 532; 14 Peters, 156, Waldon *vs.* Bodley; 1 Mason, 515, Hughes *vs.* Blake; 6 Munf., 573, Lane *vs.* Harrison; 2 Yerg., 467, 470, Estell *vs.* Taul; 3 Wend., 27, Jackson *ex dem.*, Genet *vs.* Wood; 12 Id., Beebee *vs.* Bale; 5 Selden, 28, Mason E'rs *vs.* Alstine and Wife.)

Neither the petition nor the judgment in the petitory action present a single point necessary to give to the judgment the force or effect of a bar to any subsequent suit touching the same matters. There was no judgment upon the merits, but the petition was dismissed for want of jurisdiction and absence of proper parties, so far as the petition related to the relief sought by this bill, the vacating of the Hughes patent; and it was dismissed generally because it was "defective, uncertain, and insufficient in the statement of the cause of action." In dismissing the petition, the court say, touching the want of jurisdiction and of proper parties: "As a direct action to annul the patent, even were it brought before the right tribunal, it must fail, because the complainants are in possession under a patent, and the United States, who granted both patents, were not parties to this suit, but are proceeding in their own courts against Hughes to procure a surrender of his title." That the decision was not upon the merits, or intended in any way to conclude or affect the rights of any one, is declared in terms by the court. In dismissing the petition, they further say: "Whatever rights the plaintiffs may have under the facts set forth have been duly guarded; first, by a reservation in the original decree of the district court in the case of Hughes *vs.* Sewall, which leaves the Hughes patent open to investigation in the proper form and forum; and, secondly, by the qualification annexed to the decree by the judgment of this court, pronounced on appeal, which will stay its execution until the validity of Hughes's patent shall be judicially ascertained." The petition, therefore, was dismissed by the State court, not upon the merits, but because there could be no binding decision upon the merits, and because the proper parties were proceeding in proper form in this court to obtain the relief sought.

But a decision upon the merits even in the petitory action could not bar the United States in this suit. It was not a party to that suit, and is not a privy, for it derives no title to the matters in con-

troversy through any of the parties. A decree in *this* suit will doubtless estop Hughes and Hudson as to all matters in issue here, even though they were not parties, because there is a privity between them and the United States by descent of title. But a judgment in a suit between Sewall and Hudson and Hughes can have no such effect upon the rights of the United States, for there is no privity by descent of title from any of them to the United States.

The decision of the circuit court in holding that the judgment in the petitory action was no bar to this suit was therefore correct.

II. The circuit court was also correct in holding that the bill describes the titles of Goodbee and Hughes accurately, and that the former decision of this court on the demurrer in this cause was conclusive on the subject.

Every material allegation of the bill is sustained by the admissions in the appellant's answer and by the proofs; and every point raised by the answer (save the one just considered) was fully discussed and deliberately passed upon by the court (11 *Howard*, 552, *The United States vs. Hughes.*) The form of the bill was held to be sufficient; the right of the United States to maintain the suit and the power of the court to grant the relief asked were affirmed, and the purchase of Hughes was held to be fraudulent and void, because the land at the time was notoriously in the possession of Sewall and Hudson. On this point the court say: "Nor can any doubt exist that the second purchase was fraudulently obtained, Sewall and Hudson being notoriously in possession of the land as owners when Hughes made his entry at the land office," (11 *Howard*, 568,) and the relief asked was granted. This decree was opened by consent of the then Attorney General as matter of favor and not of right, induced doubtless by the supposition that the appellant had a more favorable case for the consideration of the court than was made by his demurrer, and not surely for the mere purpose of giving him an opportunity to reargue the same questions in the same form over again, and of imposing upon the court the duty of reviewing its judgment deliberately pronounced. Of course we do not say that the court has not the right to grant this favor. But is this a proper case for its exercise, or does the defendant come before the court in a shape to entitle him to such consideration? He asks, as he asked before, this court to sustain his "legal title, obtained through his fraud, and which is confessedly unsupported by a single equitable consideration against an order and a *bona fide* purchase and claim founded upon the very highest equity. He asks the court to do that in his favor, in support of his fraudulent and inequitable claim, which will constrain the United States to violate its solemn engagements to the original purchaser. In other words, he asks this court to sustain his patent, obtained through his fraud and the oversight of the public agents, and thereby transfer to him the better part of a sugar plantation purchased of the government and paid for nearly forty years ago, and which has been made valuable through the labors of its owners and their expenditures upon it. Will the court see fit to grant these favors under an answer which it could find no legal or equitable ground for awarding

under the demurrer, though both answer and demurrer present the same case?

But if the court holds that the same question may be reargued, then we say:

III. The circuit court has jurisdiction of the matters in controversy and power to grant the relief sought by the bill.

1. The suit is not brought, as claimed, to try a matter of interest between the appellant and his co-defendants, Sewall and Hudson. It is brought on behalf of the United States, and has for its object the vacating of the patent issued to Hughes through fraud on his part and the errors and oversights of the public agents, after the same had been sold to another, to the end that the United States may be enabled to carry out its engagement with the original purchaser, to convey to him the undisturbed title to the land. The true position of the United States in respect to this question, and its duty to Goodbee, as well as its right to maintain this suit, are thus stated by this court when this cause was before it in demurrer: "Under existing regulations Goodbee had a right to enter the land in dispute in exclusion of others, and did so, and the United States, as owners, having been paid for the land, was bound to make the purchaser a title in the same manner that an individual would have been bound under similar circumstances."

"As the patent to Hughes is a conveyance of the fee, the United States stand divested of the legal title, and therefore cannot fulfil their engagement with Goodbee and his alienees, to whom they stand bound for a legal title until the grant to Hughes is annulled."

"It is manifest that if the agents of an individual had been thus imposed on, the conveyance could be set aside, because of the mistake of such agents and fraud on the part of the purchaser, in order that the first contract could be complied with; nor can it be conceived why the government should stand on a different footing from any other proprietor."

The correctness of these views, when pronounced, could not be questioned, and no change has taken place in the law or the principles applicable to such cases, or in the facts of the case, to render them less so now.

It cannot be claimed by the appellant that the issuing of the patent to Goodbee in 1849 is a compliance by the United States with its engagement to him when he entered the land to convey to him the title; and that, therefore, the United States has no further interest in the land, and no further duty to discharge towards Goodbee as such original purchaser. If such patent conveyed to Goodbee the title of the land, this would doubtless be so. But it does not. The government had already conveyed the legal title to Hughes; and however fraudulently that patent was obtained, while it is outstanding the patent to Goodbee is inoperative. This has been so determined in all the litigation the Hughes patent has given rise to in the courts of Louisiana, and, as has just been seen, has been so held by this court: "As the patent to Hughes is a conveyance of the fee, the United States stand divested of the legal title, and therefore cannot fulfil their engage-

ment with Goodbee and his alienees, to whom they stand bound for a legal title until the grant to Hughes is annulled." (11 Howard, 568.)

When the Hughes patent is declared void, as it should be, then the patent to Goodbee will take effect, and not before; and until this is done the United States cannot be said to have discharged its obligations to Goodbee.

2. The jurisdiction of the circuit court extends to all controversies in law or in equity to which the United States may be a party. (Const. U. S., art. 3, §3; act of Congress of Sept. 24, 1798, (1 Statutes at Large, 73;) act of Congress of March 3, 1815, (4 Statutes at Large, 254;) 11 Howard, 552, The United States *vs.* Hughes; 3 Wheat., 171, Dungan *vs.* The United States; 1 Peters. 156, Barber *vs.* The United States.)

3. Equity will set aside or cancel a patent or other conveyance of land, obtained through mistake or fraud, on the prayer of the grantor.

This power of the court of chancery was exercised in England so early as 1684, (Attorney General *vs.* Vernon and others, 1 *Vernon*, 272;) and the same thing has been repeatedly affirmed there since, as well as by the courts of most of the States and by this court; and it may be considered as one of the undisputed powers of the court. (Story's Equity Jurisprudence, §437; Willard on Equity, 304, 305, 360; 4 Cranch, 93, Polk's Lessees *vs.* Wendell; 5 Cranch, 191, Bodley and others *vs.* Taylor; 7 Wheat., 1, Miller, &c., *vs.* Kerr and others; Id. 212, Hoffnagle *vs.* Anderson; 11 Wheat., 380, Doe *ex. dem.*, Patterson *vs.* Winn and others; 15 Peters, 98, Brush *vs.* Ware; 1 McLean, 15, Elliott *vs.* Pursill; 10 Johns, 23, Jackson *ex dem.* Lawton; 12 Johns, 17, Jackson *vs.* Hart; 1 Harr. and Mett., 23 Swartz's Lessees *vs.* Hicks; Id. 144, Lord Proprietary *vs.* Jennings; 2 Id. 201, 213, Norwood *vs.* Attorney General, *ex rel.;* Id. 244, 253, Smith and others *vs.* Maryland; 3 Dev. and Batt., 14, Miller *vs.* Frisbee.) When the present case was before this court on demurrer, after declaring that the lands of the United States are held and may be sold as lands of individual owners, it is added: "And similar remedies may be employed by the United States as owners that are applicable in the case of others. This, we think, is manifest. It was so held in the case of King and others *vs.* The United States, 3 Howard." (11 Howard, 568, The United States *vs.* Hughes.)

IV. The entry of the lands by Hughes, and the patent which issued to him and each of them, were in violation of law and of the duty and engagement of the United States to the prior purchaser, and are therefore void, and should be set aside.

1. The United States had, long before the sale or patent to Hughes, duly sold the land to Goodbee, and had taken from him the purchase price, and the only interest or right it retained in the land was to hold the legal title in trust for the benefit of Goodbee, to be transferred to him by patent when he should require it. Beyond this it had no rights or power; and especially had it no right or power to convey such legal title to another party, and thus divest itself of the power of discharging its obligation to Goodbee. That such was the

relation of the United States to this land and to Goodbee will be apparent from one or two considerations.

(1.) The land had been surveyed under the act of March 3, 1811, (2 *Statutes at Large*, 602,) and was therefore under the provisions of § 5 of the act of April 12, 1814, subject to entry by pre-emptors.

(2.) Goodbee, representing the settlement claim of Biddle, made in 1813, gave due notice in writing of his claim to a preference in the purchase of the tract; he furnished proof to the satisfaction of the register and receiver of his right to pre-empt; received the usual certificate, and on the 26th of February, 1822, he paid the receiver the price of the contents of the lot, as near as was then known, and received the usual receipt.

As to the first point, that the land was open to entry by pre-emptors, nothing need be said. It is admitted, in substance, by the answer; and if it was not, it is abundantly sustained by the testimony.

As to the other point, Goodbee's entry, it is objected that the land was not correctly described nor the quantity ascertained. The lot has two distinct legal designations by reason of having been surveyed under two distinct systems of survey. The survey under which the entry was made was the same as that under which all the lands on the Bayou Goula were entered or sold at public sale. This survey was made under the act of March 3, 1811, (2 *Statutes at Large*, 602,) by which lands on watercourses were to be laid out with a narrow front on such water. The general survey into ranges, townships and sections, was to follow, and the water front lots were then to be designated by sections, towns and ranges, according to the uniform system. In this survey the lot in question was designated lot No. 1, north side of the Bayou Goula. This survey was sufficient to enable parties to pre-empt, as if the final survey was complete. The quantity of land, however, that lot No. 1 would contain could not be known, as it was an outer lot, and the range and town lines were unyielding; the final survey might add or take something from lot No. 1, and Goodbee entered and accepted his certificate upon this condition. It was not till December 8, 1831, that the final survey was completed and approved, and the two systems of surveys connected, and the range, town and section, of lot No. 1, determined to be that by which Hughes entered. When Goodbee entered, he stated in his claim all that could be stated, and all that was necessary to designate the lot. The United States had thrown the land open and invited parties to settle and pre-empt, and Goodbee ought not to be affected injuriously because the United States had not furnished him a better description of the land, if such was necessary. Nor does the United States make any such objection. It is Hughes that does it. But he has no right to. He is a volunteer speculator, and had the means of knowing that the land had two legal designations, and that by one of them, the only one at first known, it had been entered and paid for fourteen years before. But he chose to shut his eyes to the facts before him; and having purchased, he could have remedied himself by receiving back his money, but he refused when offered, preferring rather to hold on to the "legal title." He claims his own fraud and the errors

and mistakes of the public agents have given him, thinking no doubt that, in the uncertainty of the law, his chance of obtaining a sugar plantation was worth more than the few dollars paid by him for the land.

It is also objected that the proof furnished of Goodbee's right to pre-empt was not sufficient. But it does not appear what all the proofs were. If it was known, however, its sufficiency cannot be questioned by the appellant. The statute under which the proof was offered neither prescribes the form, character, nor the amount necessary to satisfy the register and receiver; but where they are satisfied, Mr. Hughes has no right to complain. The act in question declares: "And in every case where it shall *appear to the satisfaction of the register or receiver* that any person who has delivered his notice of claim is entitled according to the provisions of this act to a preference in becoming the purchaser of a quarter section of land, such person so entitled shall have the right to enter the same." *(Act of March* 3, 1814, *section* 5, *and act February* 5, 1813.*)* The construction given by the department at an early day, under the advice of Mr. Attorney General Wirt, was, that the register and receiver were made the sole judges of the sufficiency of the proof. *(*1 *vol., p.* 213, *Opinions of Attorney General.)* This construction is clearly in accordance with the language of the act. In the absence of fraud, then, their decision cannot be questioned, and this construction has been confirmed by this court. In Wilcox *vs.* Jackson, (13 *Peters*, 498,) in speaking of the power of registers and receivers to determine the right of a party to pre-empt, the court say: "Every tribunal acting judicially, whilst acting within the scope of its jurisdiction, where no appellate tribunal is created, its judgment is final; and even where there is such appellate power, the judgment is conclusive when it only comes collaterally in question, so long as it is unreversed." The same principle is laid down in Elliott *vs.* Peirsol and others, (1 *Peters*, 340.) It is not questioned that the register and receiver acted within the scope of their jurisdiction, and there was no fraud, for the testimony in the case shows that every fact necessary to be proved to entitle Goodbee to pre-empt existed at the time he proved his claim. The sufficiency or insufficiency of the proof, therefore, cannot be questioned here.

It is also claimed that, as the lot contains more than 160 acres, Hughes's patent is good for the surplus. Hughes's patent, as will be shown, does not convey any valid interest in the land, even if Goodbee had not the prior right. But if it were otherwise, the claim made is invalid. The act authorizing the original survey of this land (*act of March* 3, 1811, § 2; 2 *Statutes at Large*, 602) directed the lands to be laid out into tracts, as far as practicable, of 58 poles in front and 465 poles in depth. These dimensions give very nearly one hundred and seventy acres to the lot. But more may be included where, from the nature of the ground or the watercourse, it is not practicable to limit it to that amount. As lands were to be surveyed in this form preparatory to being settled and pre-empted, is it not reasonable to suppose that the settler upon such lot was to be allowed to pre-empt

the whole lot, though it might contain more than 160 acres? If not, what was to be done with the surplus? The department, it is understood, has adopted the reasonable rule, and permitted the settlers to enter the lot, whatever its contents. This was the course in this case after mature consideration, after this controversy had arisen and all the facts were known to the department, and Goodbee was permitted to pay for the surplus, and he received a patent for the entire lot. If Hughes's patent was good for the surplus 15 acres, where would he take it, in front or rear, or in a strip at the side, or an undivided interest? But all these objections are invalid. We have the authority of the Commissioner of the Land Office that "the entry" (of Goodbee) "was made in accordance with the practice in such cases, and was regular in all respects;" and this court has declared that Goodbee had a right to enter the land in dispute in exclusion of others, and did so. (11 *Howard*, 568)

The right to the land then being in Goodbee, the rights and duties of the United States in relation thereto are readily determined. Although the United States is sovereign in all that relates to public affairs, it neither claims, nor does it possess, powers or rights different from individual owners in the sale of its lands. An entry and payment has the same effect upon the rights and powers of the government over its land and the interests of the purchaser as a sale and purchase between individual vendors and vendees. It is so intended by the acts of Congress, and it is so affirmed by this court. When this case was before the court on demurrer it declared: "In this country the lands of the United States lying within the States are held and subject to be sold (under the authority of Congress) as lands may be held and sold by individual owners, or by ordinary corporations. (11 *Howard*, 568.) The principle is, that where the United States deals in matters of this kind, it stands upon precisely the same footing as individuals. (9 *Wheat*, 907; *The United States Bank* vs. *Planters' Bank*.) If an individual purchases land of another, and pays the purchase price, the purchaser becomes the owner, to all intents and purposes, though no conveyance of the land is made; but the seller holds the legal title in trust for him, and the latter has no more right to convey the land to a third party than if such legal title had been conveyed with the equitable title at the time of the purchase. On every principle of equity and justice this should be so where the United States is the vendor; and so it follows from the principles which this court has declared applicable to transactions of this character by the government. The rule was affirmed in this case in terms as has been seen, and has been repeated in other cases. In Carroll *vs.* Spafford, (3 *Howard*, 460, 461,) where the question arose as to whether the land sold by the United States, but for which patents had not issued, was yet the property of the United States, it was held that "where the land was purchased and paid for it was no longer the property of the United States, but of the purchaser. He held for it a final certificate, which could no more be cancelled by the United States than a patent. It is true if the land had been previously sold by the United States, or reserved from sale, the cer

tificate or patent might be recalled by the United States as having been issued through mistake. In this respect there is no difference between the certificate holder and the patentee."

"It is said the fee is not in the purchaser, but in the United States, until the perfect title shall issue. This is technically so at law, but not in equity. The land, in the hands of the purchaser, is real estate, descends to his heirs, and does not go to his executors or administrators. In any legal and equitable aspect it is considered as belonging to the realty."

"Now, lands which have been sold by the United States can, in no sense, be called the property of the United States than lands patented. So far as the rights of the purchaser are considered, they are protected by the patent certificate as fully as under a patent. Suppose the officers of the government had sold a tract of land, received the purchase money, and issued a patent certificate, can it be contended that they could sell it again and convey a good title? They could no more do this than they could sell land a second time which had formerly been patented. When sold, the government, until the patent shall issue, holds the mere legal title for the land in trust for the purchaser, and any second purchaser would take the land charged with the trust." The principles of this case were affirmed and applied in Levi *vs.* Thompson, (4 Howard, 17.)

2. Hughes cannot claim to hold the land as a *bona fide* purchaser for a valuable consideration paid before notice of the rights acquired by Goodbee and his assigns and grantees in the land.

(1.) He had actual notice, through the records and entries in the land office, and the plat of the land by which he entered the lot, that it had already been entered and sold to Goodbee.

The entry, of which complainants' exhibit "A" is a transcript, gives every fact necessary to show when and how the land had been entered by Goodbee. Exhibit "C" shows the lot to be marked "sold," and also that the plat by which Hughes was permitted to enter contained both the numbers of the lot. Here, then, was full notice. But if it was not, that which is sufficient to put a party on inquiry is notice. (15 Peters, 114, Bursh *vs.* Ware.) In the case referred to the question of notice to one claiming to be a *bona fide* purchaser was presented not unlike it in this case. Here Hughes denies having seen the records. In Bush *vs.* Ware the court say: "In his answer he says that he never saw the warrants, the entries, nor the survey on which the patent was founded, and that he has no information as to the determination of the title, except that which the patent contained. The question is not whether the defendant in fact saw any of the muniments of title, but whether he was not bound to see them. It will not do for a purchaser to close his eyes to facts —facts which were open to his investigation by the exercise of that diligence which the law imposes. Such purchasers are not protected. The law requires reasonable diligence in a purchaser to ascertain any defect of title; but when such defect is brought to his knowledge, no inconvenience will excuse him from the utmost scrutiny. He is a voluntary purchaser, and having notice of a fact which casts doubt

upon the validity of his title, are the rights of innocent persons to be prejudiced through his negligence?"

(2.) At the time of Hughes's entry at the land office, and up to the date of his patent, and for twenty years before, the land had been notoriously in the possession of Goodbee and his grantees, claiming title to the land under the entry and purchase by him, and had been extensively improved and cultivated by them. The general rule is, that possession of land is notice to a purchaser of the possessor's title. (4 *Kent's Com.*, 179.) Chancellor Walworth, in Spaffordo *vs.* Maury and others, (6 *Paige*, 383,) held that a purchaser of real estate cannot claim the same as a *bona fide* purchaser without notice as against the equitable right of a third person, who, at the time of such purchase, was in the actual possession of the premises, claiming to be the owner in fee. And this is the rule in most of the States, and has been affirmed by this court in this case in demurrer. On this point the court said: "Nor can any doubt exist that the second purchase was fraudulently obtained, Sewall and Hudson being notoriously in possession of the land as owners when Hughes made his entry at the land office." (11 *Howard*, 568.) It would seem that if notice was ever to prevail to defeat a fraudulent purchase, it ought in this case. More ample notice of the rights of the parties could scarcely be given, and no case can scarcely arise where greater injury would be done by denying to it the usual effect.

3. The land never having been offered for sale at public vendue, nor in any manner rendered liable to private entry, save under a settlement, Hughes's entry was void.

The law in force when Hughes entered this land, and under which his patent was issued, required that before any land could be entered, as this was entered by Hughes, that it should have been first offered for sale at public vendue. (*Act, April* 24, 1820, § 4.) Yet this lot had never been offered at public sale. This is clear from the evidence in the case. The public sale of the lands in this region took place under the President's proclamation of August 11, 1823. All the lands in the region were included in the register, as well those that were pre-empted or reserved for schools as those which might be sold. Those, however, known to have been pre-empted were marked opposite them in the register "sold," and none so marked were offered for sale. Lot No. 1 was so marked, and the auction sales book shows that it was passed over, and No. 2 offered first. If, then, the entry of Goodbee was in any respect defective, and conveyed to him no title, still the entry and patent to Hughes would be void, as having been made and issued in violation of law.